

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF MARTYN C. GILBEY

23 Volume I, Pages 1 - 200

24

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1 (The following is the deposition of MARTYN
2 C. GILBEY, taken pursuant to Notice of Taking
3 Deposition, unde Rule 30.02(f), at the offices of
4 Lovell White Durrant, 65 Holborn Viaduct, London,
5 England, commencing at approximately 8:35 o'clock
6 a.m., September 11, 1997.)

7 APPEARANCES:

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1 ALSO PRESENT:

2 John Meltzer and Raid Abu Manneh

3 Lovell White Durrant

4 65 Holburn Viaduct

5 London EC1A 2DY, England

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1 I N D E X

2	EXHIBITS	DESCRIPTION	PAGE MARKED
3	Plfs' Ex 741	Notice of Taking Deposition	7
4	742	Extract from minutes of	
5		BATCO Management Board	
6		meeting held 18th December	
7		1980, Bates 202029143	26
8	743	"DRAFT FOR CAC CONFERENCE,	
9		VANCOUVER," Bates	
10		109839498-500	26
11	744	"SMOKING AND HEALTH ISSUES	
12		CONFERENCE, CHELWOOD, NOVEMBER	
13		5-8, 1979, Synopsis," Bates	
14		109881381-4	82
15	745	"CURRENT ISSUES IN SMOKING AND	
16		HEALTH," Bates 109881374-80	90
17	746	Responses and Objections of	
18		Defendant British-American	
19		Tobacco Company Limited to	
20		Plaintiffs' November 4, 1996	
21		Interrogatory to	
22		British-American Tobacco Co.,	
23		Ltd., Florida litigation	97
24	747	Blackman document dated 19th	
25		May 1980, Bates 109881356-62	166

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1 748 "TRENDS IN SMOKING AND
2 HEALTH 1980," Bates
3 109881297-9 178
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1 P R O C E E D I N G S

2 (Plaintiffs' Exhibit 741 was marked
3 for identification.)

4 (Witness sworn.)

5 MARTYN C. GILBEY

6 called as a witness, being first duly
7 sworn, was examined and testified as
8 follows:

9 ADVERSE EXAMINATION

10 BY MS. WIVELL:

11 Q. Good morning, sir.

12 A. Good morning.

13 Q. Would you please introduce yourself to the
14 ladies and gentlemen of the jury.

15 A. I'm Martyn Christopher Gilbey.

16 Q. Sir, we have marked Exhibit 741. Do you have
17 that exhibit before you?

18 A. I do, yes.

19 Q. All right. This is the Notice of Taking
20 Deposition for this particular deposition; correct?

21 A. Correct.

22 Q. And you've seen it before?

23 A. I have.

24 Q. Now the plaintiffs served this notice of taking
25 deposition on B.A.T Industries P.L.C.,

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1 British-American Tobacco Company Limited, and BATUKE;
2 right?

3 A. Correct.

4 Q. All right. For the purposes of this deposition,
5 can we agree that instead of saying the name B.A.T
6 Industries P.L.C., we will address that corporation
7 as B.A.T Industries?

8 A. Yes.

9 Q. All right. And would you also agree that
10 instead of saying British-American Tobacco Company
11 Limited, we can refer to that company by the name
12 BATCO?

13 A. Yes.

14 Q. And would you agree that instead of saying the
15 name BATUKE, or -- I'm sorry, strike that.

16 Instead of saying the name B.A.T., parenthesis,
17 U.K. and Export, parenthesis, Limited, we can say
18 BATUKE?

19 A. Indeed, yeah.

20 Q. All right. Now sir, if you turn to the second
21 page of Exhibit 741, it says that pursuant to Rule
22 30.02(f), B.A.T Industries, BATCO and BATUKE shall
23 designate one or more representative who shall be
24 qualified to testify as to matters known or
25 reasonably available concerning B.A.T. documents

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1 109881322-335, and 109881312-318, including but not
2 limited to the authors of the documents, the
3 recipients of the documents, all meetings and
4 discussions relating to the documents, and any
5 related documents. Is that correct?

6 A. Yes. Yes.

7 Q. Now sir, are you the person who has been
8 designated by B.A.T Industries, BATCO and BATUKE to
9 speak here today as to issues that are set forth in
10 this deposition notice, Exhibit 741?

11 A. Yes, I am. Yeah.

12 Q. All right. Before we start talking about those
13 issues, why don't you tell the ladies and gentlemen
14 of the jury what your current position is, sir.

15 A. I'm employed by BATCO, and I'm litigation
16 counsel with BATCO.

17 Q. What does "litigation counsel" mean?

18 A. I have responsibility within the organization
19 for managing primarily the smoking-and-health
20 litigation worldwide.

21 Q. All right. Now you've been deposed before;
22 haven't you?

23 A. I have indeed.

24 Q. You and I have met before in a deposition;
25 haven't we?

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1 A. We have indeed, Ms. Wivell, yes.

2 Q. All right. In fact you have been the company
3 spokesperson in another one of these 30.02(f)
4 depositions where we were actually deposing the
5 companies; right?

6 A. Yes.

7 MR. SCHEFFLER: Objection to the form.

8 Q. I'm sorry?

9 A. I agree, yes.

10 Q. All right. Now how long have you been employed
11 in your position as worldwide litigation coordinator
12 for BATCO?

13 A. Since March 1996.

14 Q. You're a lawyer?

15 A. I'm a lawyer.

16 Q. And who do you report to?

17 A. Neil Withington.

18 Q. What's his position?

19 A. He's the assistant general counsel.

20 Q. Now in your position as worldwide litigation
21 coordinator for smoking-and-health-related cases, you
22 are responsible for BATCO's -- the coordination of
23 BATCO's litigation in the smoking-and-health case
24 that's been brought by the state of Minnesota and
25 Blue Cross Blue Shield; right?

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1 A. Right.

2 Q. Now Exhibit 741 was sent to you by the
3 plaintiffs; right?

4 MR. SCHEFFLER: Objection.

5 A. I believe that's right, yes.

6 Q. Okay. And do you understand that Exhibit 741
7 requires B.A.T Industries -- I'm sorry, strike that.

8 Do you understand that Exhibit 741 requires
9 B.A.T Industries, BATCO and BATUKE to produce a
10 person qualified to testify as to matters reasonably
11 known about the subjects that are listed that we read
12 earlier?

13 MR. FRANKEL: Object to form.

14 A. So far as that is possible to produce, I
15 understand that, yes.

16 Q. You understand that the deposition notice,
17 Exhibit 741, actually is to the companies; right?

18 MR. SCHEFFLER: Objection.

19 A. I understand that.

20 Q. And you understand that you have been designated
21 as the corporate representative of B.A.T Industries,
22 BATCO and BATUKE to speak and their behalf at this
23 deposition.

24 MR. SCHEFFLER: Objection to the form.

25 MS. WIVELL: All right. Let me break it

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1 down.

2 Q. You understand you have been designated as the
3 corporate representative of B.A.T Industries to speak
4 at this deposition?

5 MR. SCHEFFLER: Same objection.

6 A. I do.

7 Q. You understand that you have been designated as
8 the corporate spokesperson for BATCO at this
9 deposition?

10 MR. SCHEFFLER: Objection.

11 A. I do.

12 Q. And you have been designated as the person to
13 speak on behalf of BATUKE in this deposition.

14 MR. SCHEFFLER: Objection.

15 A. I do.

16 Q. So you understand that you are, when you're
17 giving your answers here today, speaking on behalf of
18 the three defendants that Exhibit 741 was directed
19 to.

20 A. I understand that.

21 THE REPORTER: Let's go off the record a
22 moment, please.

23 (Discussion off the record.)

24 BY MS. WIVELL:

25 Q. You have consented to speak for B.A.T Industries

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1 at this deposition?

2 A. I have.

3 Q. You've consented to speak for BATCO at this
4 deposition?

5 A. I have.

6 Q. And you have consented to speak for BATUKE at
7 this deposition?

8 A. I have.

9 Q. You understand that your testimony here today is
10 binding on the three defendants that Exhibit 741 was
11 sent to.

12 MR. SCHEFFLER: Objection.

13 A. I understand that.

14 MR. SCHEFFLER: Let me just object to the
15 form of the question. Go ahead.

16 A. I do understand that.

17 Q. Do you have authority to speak for these three
18 defendants during this deposition here today?

19 A. Yes, I do.

20 Q. And so you would agree that for the purposes of
21 this deposition, you are the spokesperson of the
22 three defendants that Exhibit 741 went to.

23 MR. SCHEFFLER: Objection, asked and
24 answered. Go ahead.

25 A. I agree, yes.

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1 Q. Do you understand that the answers which you
2 give in this deposition to the questions I ask must
3 be answered fully based not only on what you know
4 personally, Mr. Gilbey, but also on the knowledge
5 available to the three defendants?

6 A. I understand that.

7 Q. And do you understand that the answers which you
8 give in this deposition to the questions I ask must
9 be answered completely based not only on what you
10 know personally, but knowledge available that -- I'm
11 sorry, strike that.

12 Do you understand that the answers which you
13 give in this deposition to the questions I ask must
14 be answered completely based not only on what you
15 know personally, but also on knowledge available to
16 B.A.T Industries, BATCO and BATUKE?

17 MR. SCHEFFLER: Objection to the form.

18 A. I understand.

19 Q. Since counsel made that objection, I'm going to
20 try and cure it.

21 You understand that the answers --

22 MR. SCHEFFLER: My objection is not that
23 it's compound. My objection is that -- that his
24 knowledge is what you're asking him today, wherever
25 he got that knowledge.

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1 Q. Well sir, do you understand -- all right. And
2 in that case I will not re-ask the question.

3 Do you understand that the answers you give
4 today are to be based not only on what you know
5 personally, but what you learned in preparation for
6 this deposition?

7 A. I do understand, yes.

8 Q. Is there anyone who is better qualified or more
9 suitable to testify regarding the subjects that are
10 listed in Exhibit 741?

11 A. No one that I'm aware of, no.

12 Q. Now from time to time I'm going to be referring
13 to the lawsuit brought on behalf of the state of
14 Minnesota and Blue Cross Blue Shield against B.A.T
15 Industries, BATCO and BATUKE as "this case." Could
16 we agree that when we refer to "this case," that's
17 what we mean?

18 A. That's fine by me, yes.

19 Q. All right. Can we also agree that unless my
20 questions ask for information -- strike that.

21 Now you said you were the person who was most
22 knowledgeable about the -- the information that's
23 requested in Exhibit 741; is that right?

24 MR. FRANKEL: Object to form.

25 A. I don't think I said precisely that. You asked

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1 me if I knew of anyone who was better qualified, and
2 I said I wasn't aware of any.

3 Q. All right. Are you knowledgeable about the
4 documents that are listed in Exhibit 741?

5 A. I have -- I have knowledge of them, yes.

6 Q. Are you knowledgeable concerning the related
7 documents -- I'm sorry, strike that.

8 Are you knowledgeable concerning the documents
9 related to those which are specifically enumerated in
10 Exhibit 741?

11 MR. SCHEFFLER: Objection to the form.

12 A. Which particular related documents were you
13 thinking of?

14 Q. Well there are several related documents that I
15 listed on a predesignation list. Is -- are you aware
16 of that?

17 MR. SCHEFFLER: Objection.

18 A. That is --

19 MR. SCHEFFLER: Objection to the form, lack
20 of foundation.

21 A. I -- I've seen the documents that were
22 designated, yes.

23 Q. All right. You've read them?

24 A. I have.

25 Q. Did you talk to anyone in preparation for your

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1 deposition today?

2 A. Yes, I did.

3 Q. Who did you speak to?

4 A. I spoke to John Meltzer at Lovell White Durrant
5 and Raid Abu Manneh, also of Lovell White Durrant. I
6 spoke to Bruce Scheffler, Chadbourne & Parke; he led
7 the people that I was discussing this with. I can't
8 think of anyone else at the moment.

9 Q. All right. Is Mr. Meltzer a lawyer?

10 A. He's a partner at Lovell White Durrant, yes.

11 Q. And Lovell White Durrant are solicitors from --
12 a firm of solicitors in London?

13 A. That's right.

14 Q. Who do they represent?

15 A. They represent the three entities noticed on
16 this deposition notice.

17 Q. All right. You talked to Mr. Manneh in
18 preparation for your deposition; is that right?

19 A. I did.

20 Q. What's his position?

21 A. He's an assistant solicitor at Lovell's as well.

22 Q. You spoke to Mr. Scheffler?

23 A. I did.

24 Q. What's his position?

25 A. Mr. Scheffler is a partner at Chadbourne &

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1 Parke.

2 Q. Mr. -- Mr. Scheffler is a lawyer, too; right?

3 A. He is.

4 Q. In other words, all three of these people are
5 lawyers.

6 A. Yeah.

7 Q. And Chadbourne & Parke, what is their position?

8 A. They are --

9 MR. SCHEFFLER: Objection to the form. Go
10 ahead.

11 A. They're -- they're also representing one or more
12 of the entities in the notice.

13 Q. Which entities do they represent, sir?

14 A. BATCO and -- and BATUKE.

15 Q. Sir, did you talk to Dr. Blackman?

16 A. No, I didn't.

17 Q. Why?

18 MR. SCHEFFLER: Objection to the form.

19 A. I just didn't. I don't -- I didn't think it was
20 necessary to.

21 Q. Well sir, you understand that Dr. Blackman has
22 submitted an affidavit in the state of Minnesota's
23 case; don't you?

24 A. I did know that, yes.

25 Q. Now Dr. Blackman is still alive.

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1 A. Yes, he is.

2 Q. He was willing to give an affidavit to the three
3 defendants in this case that Exhibit 741 went to;
4 right?

5 A. Apparently he was, yes.

6 Q. Were you involved in getting that affidavit from
7 Dr. Blackman?

8 A. No, I wasn't.

9 Q. Now Dr. Blackman was involved in either
10 authoring or receiving some of the documents which
11 have been designated as the subject of today's
12 deposition; right?

13 A. I don't know that.

14 Q. You didn't see his name on those documents,
15 sir?

16 MR. SCHEFFLER: Are you talking about
17 documents designated or documents in the notice?

18 A. I -- I thought you asked me whether he'd
19 received some of the documents. I don't know whether
20 he received them or not. Of course his name does
21 appear on some of the documents that you've noticed,
22 yes.

23 Q. Well sir, didn't you feel it was necessary, in
24 order to properly prepare for this deposition, to
25 talk with Dr. Blackman?

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1 MR. SCHEFFLER: Objection, asked and
2 answered.

3 A. No, I didn't. No.

4 Q. Did any of the three gentlemen that you
5 mentioned earlier who you spoke with tell you that
6 they had spoken with Dr. Blackman?

7 MR. SCHEFFLER: Objection.

8 A. Not for the purpose of this deposition, no, they
9 didn't tell me that.

10 Q. You understand that Dr. Blackman still resides
11 in the United Kingdom; right?

12 A. Yes, as I understand it.

13 Q. And he resides relatively close to London;
14 doesn't he?

15 A. I -- yeah. Well, I don't know exactly where he
16 lives, but can't be too far away I shouldn't think.

17 Q. Did you try and phone him?

18 MR. SCHEFFLER: Objection, asked and
19 answered.

20 A. I didn't try and contact him at all. I -- I'd
21 read the noticed documents and I'd read the documents
22 set out in the deposition; to my mind the story was
23 told by those documents. I didn't think it was
24 necessary to contact Dr. Blackman.

25 Q. Well some of those documents concerned Patrick

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1 Sheehy; don't they?

2 MR. SCHEFFLER: Objection. Counsel, are we
3 talking about the documents that you noticed for this
4 deposition which are listed here with Bates numbers?

5 MS. WIVELL: Let me rephrase my question so
6 I'm crystal clear.

7 Q. Some of the documents that I designated for this
8 deposition today talk about Patrick Sheehy; don't
9 they?

10 A. They do. His name is on some of the documents,
11 yes.

12 Q. And sir, did you try and meet with Patrick
13 Sheehy to ask him about these documents?

14 A. No, I didn't. As I've explained, having read
15 the documents, to my mind they told a fairly complete
16 story; I didn't think it was necessary to go in and
17 speak to the people that may have been referred to in
18 those documents.

19 Q. So you didn't try and call Sir Patrick Sheehy;
20 did you?

21 MR. SCHEFFLER: Objection, asked and
22 answered.

23 A. I think I've answered that. No, I haven't.

24 Q. Is there anyone else that you spoke to in
25 preparation for your deposition today?

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1 A. No.

2 Q. Are there any documents besides those which are
3 designated in preparation for today's deposition
4 which you looked at in order to prepare?

5 A. Yes, there were. Yes.

6 Q. What documents were those, sir?

7 A. I read the -- the more complete file from which
8 the two documents here and the other ones you noticed
9 came from. That's the -- the file that's -- a copy
10 of which is in the Minnesota -- in -- in the
11 Guildford depository for the Minnesota plaintiffs.
12 Except, of course, that wouldn't include the -- the
13 privileged documents. I also read the two sets of
14 interrogatories which referred to these two noticed
15 documents, I believe in the Florida case.

16 Q. Anything else you read?

17 A. I don't think so, no.

18 Q. Is -- strike that.

19 You mentioned that you read the more complete
20 file in an answer just a moment or two ago. Do you
21 recall that, sir?

22 A. Yes.

23 Q. Does that file have a name?

24 A. I don't know it by name, no. I -- I --

25 It no doubt has a file number, which I don't

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1 know. It was just the file from which these
2 documents were taken. I don't know what it's called.

3 Q. Whose file was it?

4 A. I don't know for sure. I believe -- I --

5 I'll have to check it to be sure. I believe it
6 was Blackman's file.

7 Q. And when you say "Blackman," you're talking
8 about Dr. Lionel Blackman?

9 A. Yes.

10 Q. What leads you to believe that the documents
11 that we're talking about here today came from Dr.
12 Blackman's file?

13 A. Only because his name is predominant.

14 Q. Did anyone tell you that they had come from Dr.
15 Blackman's file?

16 A. No. I don't think so, no.

17 Q. Is there anything else that you read in
18 preparation for your deposition today?

19 A. I can't think of anything else.

20 Q. Is there anyone else you talked to?

21 MR. SCHEFFLER: Objection, asked and
22 answered.

23 A. I can't recall anyone else.

24 Q. Was there anything shown to you in preparation
25 for your deposition today?

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1 A. I'm sure there was. I can recall -- no, I don't
2 think --

3 Nothing other than what I've said that wasn't in
4 those documents that I've mentioned, I think.

5 Q. Have you read any deposition testimony in
6 preparation for this deposition?

7 A. Sorry. Can you repeat the question?

8 Q. Yes, sir.

9 Have you read any deposition testimony in
10 preparation for this deposition?

11 A. No, I haven't. No, no.

12 I'm sorry. I was hesitating only because I -- I
13 wish to check my answer about anything else I've read
14 because I'm not sure one document I'm thinking of
15 came from the file I'm thinking of.

16 Q. All right. Would you like to take a moment and
17 we can go off the record and you can check, and then
18 we can come back and you can answer that question?

19 A. If you'd like me to do that, certainly.

20 Q. That's fine.

21 MR. SCHEFFLER: Okay.

22 THE REPORTER: Off the record, please.

23 (Discussion off the record.)

24 BY MS. WIVELL:

25 Q. Sir, we took a break so that you could check on

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1 an answer. Have you clarified the situation?

2 A. Yes, I have. Yes. I was concerned that one
3 document, which I wasn't sure, came from the file
4 that I referred to earlier, and I've -- I've made
5 that check, and in fact there were two documents
6 which would be documents that I read in addition by
7 way preparation. One was a BATCO management board
8 minute of the 18th of December, 1980 --

9 Would you like the Bates number for that?

10 Q. Please.

11 A. 202029143.

12 The other document is headed "DRAFT FOR CAC
13 CONFERENCE, VANCOUVER," and the Bates number for the
14 commencing page is 109839498.

15 Q. Are those documents here today?

16 A. They are.

17 Q. Did you review them while you were taking a
18 break?

19 A. No, I didn't review them, no. No. Just --

20 Q. You have reviewed them in the past.

21 A. Indeed. That's the whole point. I -- I looked
22 at these in part of my preparation.

23 Q. All right. Do you have copies that I might
24 have?

25 A. We do.

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1 Q. Could you give them to me so we could mark them,
2 please.

3 MR. SCHEFFLER: Sure. Here's two copies.
4 (Plaintiffs' Exhibit 742 was marked
5 for identification.)

6 BY MS. WIVELL:

7 Q. Sir, showing you what --
8 Showing you what has been marked as Plaintiffs'
9 Exhibit 742, is this one of the documents that you
10 reviewed in addition to -- I'm sorry, strike that.
11 Is Exhibit 742 one of the documents you just
12 referred to that you have reviewed in preparation for
13 this deposition?

14 A. Yes, it is. Yes.

15 Q. For the record, it's entitled "RESTRICTED,
16 Extract from Minutes of BATCo Management Board
17 meeting held on 18th of December 1980;" right?

18 A. That's it.

19 Q. And the Bates number is 202029143.

20 A. Correct.

21 Q. All right.

22 (Plaintiffs' Exhibit 743 was marked
23 for identification.)

24 BY MS. WIVELL:

25 Q. Sir, showing you what's been marked as

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1 Plaintiffs' Exhibit 743, this is a document that
2 bears the Bates number 109839498 on its first page;
3 right?

4 A. It does.

5 Q. It is entitled "DRAFT FOR CAC CONFERENCE,
6 VANCOUVER."

7 A. That's correct.

8 Q. And it is additionally a document you reviewed
9 in preparation for your deposition today.

10 A. That's correct.

11 Q. Is there anything else that you reviewed to get
12 ready to testify here today?

13 A. I don't think so, no. I think I've given you as
14 much as I can recall.

15 Q. Was anyone else -- strike that.

16 Sir, you're aware, aren't you, that in the
17 mid-'70s a discussion or dialogue was going on within
18 BATCO about whether or not smoking caused disease?

19 MR. SCHEFFLER: Objection to the form of
20 the question. Objection in that it's beyond the
21 scope of this deposition.

22 A. I think the answer to that is no, I'm -- I'm not
23 aware of -- of that debate.

24 Q. Sir, showing you what's previously been marked
25 as Plaintiffs' Exhibit 501, would you take a moment

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1 and review it after I identify it for the record.

2 For the record, Plaintiffs' Exhibit 501 is a
3 memo Bates numbered 110076427; correct?

4 A. I see, yes.

5 Q. All right. And would you please take a moment
6 and review it.

7 A. I've had a look at that.

8 Q. Sir, you've had the opportunity to review
9 Plaintiffs' Exhibit 501.

10 A. I've -- I've skimmed it. I can't say that I
11 read it in great detail.

12 Q. The cover sheet is a memo from Stephen Green to
13 Patrick Sheehy and P. L. Short; right?

14 A. Yes.

15 Q. Now at the time that this document was written
16 in 1976, Stephen Green was the head of research and
17 development for BATCO; wasn't he?

18 A. I don't -- I don't know that. I know he was
19 associated with research during his career. I don't
20 know his position at this time.

21 Q. Well you know that he was a member -- I'm sorry,
22 strike that.

23 He was a member of the board of directors of
24 BATCO; wasn't he?

25 A. I really don't know his -- his -- his career

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1 path. I know he had a senior position, but I -- I
2 just don't know the definite answer.

3 Q. By "senior position," you mean that he had a
4 position high up in the hierarchy of research and
5 development at BATCO.

6 MR. SCHEFFLER: Objection to the form.

7 A. I just mean in general terms I know he had a
8 senior position. As I say, I can't be specific.

9 Q. Now at the time that this document was written,
10 Patrick Sheehy had what position, sir?

11 A. I have no idea.

12 Q. Well he eventually in 1982 became chair of B.A.T
13 Industries P.L.C.; right?

14 A. He certainly became -- became chairman of
15 Industries P.L.C., yes. I think it was 1982. I'm
16 not absolutely sure.

17 Q. All right. Before that he was a member of the
18 board of BATCO?

19 A. I don't know that. I don't know his career path
20 either.

21 Q. Well you know that he was chair of BATCO; don't
22 you, sir?

23 MR. SCHEFFLER: Objection.

24 A. No, I don't.

25 Q. In this document Mr. Green gives some opinions

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1 about the effect of restrictions on current marketing
2 and marketing of cigarettes in the future; doesn't
3 he, sir?

4 MR. SCHEFFLER: Objection to the form of
5 the question. Objection, lack of foundation that
6 this document has anything to do with the
7 appreciation and change-of-stance documents which are
8 the subject of this deposition; therefore, it's
9 beyond the scope of this deposition. Objection to
10 the use of the document as it's an incomplete
11 document insofar as it is a commentary on a document
12 that has not been produced.

13 If you can answer the question, sir, please do
14 your best.

15 MS. WIVELL: Well in order to meet your
16 form foundation -- or your form objection, let me
17 restate the question.

18 Q. In this document Mr. Green gives some opinions
19 on effects of restrictions on current cigarette
20 marketing; doesn't he?

21 MR. SCHEFFLER: Same objection.

22 A. He says many things. He certainly refers to
23 restrictions, yes.

24 Q. He also talks about whether cigarettes cause
25 disease in smokers; doesn't he?

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1 MR. SCHEFFLER: Same objection, lack of
2 foundation, beyond the scope of this deposition,
3 no -- no foundation laid that this has anything to do
4 with the two documents that are the subject of this
5 deposition.

6 MS. WIVELL: Sir, I believe all you need to
7 say is "objection." That will be fine.

8 MR. SCHEFFLER: I will state my objections
9 and succinctly state the grounds for them. Thank
10 you.

11 MS. WIVELL: Well just for the record, the
12 deposition notice is clear that not only do we intend
13 to talk in this deposition about the two specifically
14 enumerated documents, but other, I believe it says,
15 quote, related documents, and we believe this is a
16 related document.

17 MR. SCHEFFLER: Objection to the -- to the
18 statements of counsel. Objection that there is no
19 relationship shown between this document and the two
20 documents noticed for the deposition, and no attempt
21 has been made to lay such a foundation.

22 BY MS. WIVELL:

23 Q. Sir, Mr. Green in Exhibit 501 talks about
24 whether cigarettes cause disease in smokers; right?

25 A. Could you show me the part you're thinking of?

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1 Q. Certainly. On the --

2 On the page that ends with Bates number 429, he
3 says, "Smoking is associated with various diseases
4 and the simplest explanation is direct causal."
5 Correct?

6 A. I see that, yes.

7 Q. All right. And he goes on to say, "Probably a
8 more correct hypothesis is susceptible sub group plus
9 direct and indirect causal." Right?

10 A. Yes.

11 Q. Now sir, isn't it a fact that Dr. Green's
12 opinion caused debate within BATCO and the other
13 companies whose depositions are being taken here
14 today?

15 MR. FRANKEL: Object to form.

16 Q. Let me rephrase the question.

17 Dr. Green's comments as stated in 501 caused
18 debate within BATCO; didn't they?

19 MR. SCHEFFLER: Objection, lack of
20 foundation. No relationship shown between this
21 document and the subject matter of this deposition.
22 Beyond the scope.

23 A. I really have no idea because we're talking
24 about 1976, which is not a period that I'm familiar
25 with.

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1 Q. Well sir, you're aware of the fact that the
2 subject of whether cigarette smoking caused disease
3 was discussed at various meetings of the CAC; aren't
4 you?

5 MR. SCHEFFLER: Objection, overbroad, no
6 timeframe.

7 A. I think I have to go back to tell you what work
8 I've done in preparation for this deposition. And --
9 and I've given you details of the documents that I --
10 I've looked at, and I think they're all around the
11 19 -- end of 1979 through to the end of 1980. That
12 period I'm relatively familiar with from that
13 documentation. Around this earlier period, I've --
14 I've got no idea.

15 Q. So as you sit here today, you just can't tell
16 the ladies and gentlemen of the jury whether or not
17 Dr. Green's statements sparked opinion among various
18 BAT Group members.

19 MR. FRANKEL: Object to form.

20 Q. Is that right?

21 MR. SCHEFFLER: Objection, asked and
22 answered. Objection, beyond the scope of this
23 deposition.

24 A. The answer is I have to agree with you, yes.

25 Q. Let me ask -- re-ask the question again because

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1 I think I made a misstatement.

2 As you sit here today, you just can't tell the
3 ladies and gentlemen of the jury whether or not Dr.
4 Green's statements in Exhibit 501 sparked discussions
5 among various BAT Group members.

6 MR. SCHEFFLER: Same objections.

7 A. I can't say whether it sparked discussion or
8 didn't spark discussion.

9 Q. Well sir, you are aware that Dr. Green continued
10 to discuss whether cigarette smoking caused disease.

11 MR. SCHEFFLER: Objection to the form of
12 the question. Objection to the assumptions in the
13 question. Objection to the lack of foundation that
14 this is anything relating to the scope of this
15 deposition.

16 A. I have to go back to an answer a couple of
17 minutes ago about what I've looked at for the
18 deposition. I can't make any assumptions about this
19 period in time; it's just outside my knowledge.

20 Q. Sir, showing you what's been previously marked
21 as Plaintiffs' Exhibit 314, this is a document
22 entitled "CIGARETTE SMOKING - CAUSAL RELATIONSHIPS;"
23 correct?

24 A. That's the heading, yes.

25 Q. For the record, it's Bates number 100428102; --

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1 A. That's correct.

2 Q. -- right?

3 And if we turn to the last page of the document,
4 we see the initials SJG; right?

5 A. We do.

6 Q. And those are Dr. Green's initials; aren't they?

7 A. I think that's a fair assumption, yes.

8 Q. All right. Sir, have you read this document
9 before?

10 A. Somewhat a quick scan. I don't believe I've
11 read the document. I mean some of the text in it
12 is -- is familiar, but I think it's just been said
13 before in other places.

14 Q. All right. Why don't you take a moment and read
15 the document.

16 A. I've had a look at that.

17 Q. All right. You've now read Exhibit 314;
18 correct?

19 A. Yes.

20 Q. And in this document the author comments about
21 whether cigarette smoking causes disease; --

22 MR. SCHEFFLER: Objection to the form of
23 the question.

24 Q. -- right?

25 MR. SCHEFFLER: Excuse me.

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1 Objection to the form of the question.

2 Objection in that it goes beyond the scope of this
3 deposition. The deposition was noticed for
4 examination with respect to two documents; the
5 deposition is limited to those two documents.

6 The document 314 has no date. There's no
7 indication that the document has anything to do with
8 the documents at issue at this deposition. And it's
9 authored by Dr. Green, who there's no -- been no
10 foundation laid was involved in any way whatsoever
11 with the two documents which are the subject matter
12 of this deposition, nor has there even been a
13 foundation laid that Dr. Green was even with the
14 company at the time these documents were authored, so
15 it's beyond the scope of this deposition. It's an
16 improper use of -- of this witness.

17 Counsel has noticed prior to this deposition a
18 30(f)(2) witness for purposes of discussing the
19 companies' positions on smoking and health, has taken
20 that deposition of Dr. Proctor for two days as a
21 Class A witness to examine those issues. This
22 deposition is not for that purpose. Mr. Gilbey has
23 not been prepared to address those issues, nor is he,
24 with all due respect, Mr. Gilbey, competent to so
25 address the history of the positions of BATCO and

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1 smoking and health or smoking and disease, and it's
2 improper to expand the scope of this deposition in
3 those areas.

4 MS. WIVELL: Well counsel, since you've
5 made a speech, I would just like to say you're
6 wrong. This document -- I'm sorry. This deposition,
7 according to Exhibit 741, was noticed to discuss two
8 specific documents and authors of the documents,
9 recipients of the documents, all meetings and
10 discussions relating to the documents, and any
11 related documents, and this is clearly a related
12 document. And we disagree with your position. And I
13 don't believe we need to be spending time wasting --
14 wasting time putting things on the record when the
15 court's order says that all we're supposed to do is
16 say "objection."

17 But I'm going to go forward and re-ask my
18 question. And if you have an issue, I invite you to
19 address it with the court.

20 BY MS. WIVELL:

21 Q. Now sir, in this document the author talks about
22 whether cigarette smoking causes disease; right?

23 MR. SCHEFFLER: Objection to the use of
24 Exhibit 314. Objection to the form of the question.
25 Objection to lack of foundation. Objection to the

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1 lack of foundation shown that this document has
2 anything to do with the two documents that were
3 noticed for this deposition, in neither the timeframe
4 nor any other way. Objection to the lack of
5 relationship to the subject matter of this
6 deposition.

7 MS. WIVELL: Sir, I think you're -- you can
8 just state "objection" and not waste all this time.

9 MR. SCHEFFLER: I'm going to state my
10 objections --

11 MS. WIVELL: That's fine.

12 MR. SCHEFFLER: -- because I think this
13 will be a transcript that we have to review with the
14 court. And I will state my objections.

15 MS. WIVELL: That's fine. I have indicated
16 that we believe this is a related document and I
17 intend to show that it's a related document.

18 MR. SCHEFFLER: My objection is you haven't
19 shown the relationship before the use of the
20 document.

21 MS. WIVELL: And I'm going to tie it up.

22 BY MS. WIVELL:

23 Q. Now sir, in this document the author comments --
24 I'm sorry, strike that.

25 In this document the author discusses whether

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1 cigarette smoking causes disease; right?

2 MR. SCHEFFLER: Same objections.

3 A. There's a --

4 This is a paper broadly relating to causality,
5 yes.

6 Q. And in the page that ends with Bates number 104
7 that begins "In summary," the author concludes,
8 quote, "It may therefore be concluded that for
9 certain groups of people smoking causes the incidence
10 of certain diseases to be higher than it would
11 otherwise be." Correct?

12 A. That's what he says.

13 Q. Now sir, one of the reasons this document was
14 written, according to its contents, was to discuss
15 whether there ought to be change -- a change in the
16 companies' public attitude towards cigarette smoking
17 and causation.

18 MR. SCHEFFLER: Objection to the --

19 Q. Isn't that true?

20 MR. SCHEFFLER: Objection --

21 A. Can you show me --

22 MR. SCHEFFLER: Wait. Objection to the
23 form of the question. Objection, there has been no
24 relationship laid with this document in the scope of
25 this deposition.

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1 A. Can you show me the part you're thinking of?

2 Q. Certainly. In the second complete paragraph on
3 the first page after the quote it begins
4 "Naturally...." Do you see that, sir?

5 A. I do, yes.

6 Q. And then four lines down it says, "It is not my
7 object here to propose changes in our public attitude
8 but to explore a little of the nature of concepts of
9 causality and if possible to clear away some of the
10 debris which clutters up this issue in order to
11 resolve the dilemma where on one hand the simplest
12 hypothesis to fit the facts is that smoking, quote,
13 causes, quote, certain diseases and on the other hand
14 there is never likely to be sufficient evidence to
15 establish that a particular product caused a
16 particular disease in a particular individual." Do
17 you see that, sir?

18 A. Yes.

19 Q. And sir, this paper concerns the author's
20 attempt to try and sort through some of the issues on
21 whether cigarette smoking causes disease; --

22 MR. SCHEFFLER: Objection.

23 Q. -- right?

24 MR. SCHEFFLER: Objection to the form of
25 the question. Objection to the -- to the statements

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1 of counsel, mischaracterization of the document. The
2 document speaks for itself. And objection to the use
3 of this document with this witness.

4 A. I -- I don't feel qualified, on -- on my
5 reading, to give this any characterization to -- to
6 agree or disagree with -- with your
7 characterization. It's -- it's a general paper on
8 causality for -- written for what purpose I don't
9 know, bringing in the opinions of other people and --
10 and making some quite fascinating comments in various
11 places. But as I say, I -- I really can say no more
12 about -- about the paper than that.

13 Q. Well the author does talk in the second
14 paragraph about the companies' public position
15 concerning the issue of smoking and disease; right?

16 MR. SCHEFFLER: Same objections.

17 A. I don't -- I'm not sure -- he doesn't --
18 He doesn't use those particular words, but he
19 talks about public positions, and elsewhere it refers
20 to smoking and disease.

21 Q. And he says, "Of course the public position of
22 the tobacco companies is dominated by legal
23 considerations." Isn't that true?

24 A. That's in the first sentence of the second
25 paragraph, yes.

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1 Q. And he also says in that paragraph, "By
2 repudiating a causal role for their products they
3 hope to avoid liability." Right?

4 A. That's what it says.

5 Q. And sir, today --

6 Up till today, have any of the defendants who
7 you're speaking for here today ever admitted that
8 cigarette smoking causes disease?

9 MR. SCHEFFLER: Objection to the form of
10 the question. Objection to lack of any relevance to
11 that question to the scope of this deposition.

12 Counsel has examined BATCO's and B.A.T
13 Industries' 30(f)(2) witnesses on the stance of
14 public statements as well as their views on smoking
15 and health. That deposition was noticed, was taken.
16 Counsel had the opportunity to ask those questions of
17 that witness, who was the appropriate witness to be
18 asked. Mr. Gilbey is not here for that purpose. And
19 I object to what counsel is attempting to do with his
20 deposition as improper.

21 MR. FRANKEL: I would note also for the
22 record that the deposition notice asked to discuss
23 issues relating to the authors of the documents, the
24 recipients of the documents, et cetera, relating to
25 the documents, not related to all matters of smoking

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1 and health.

2 MS. WIVELL: Well actually, counsel, you
3 misread that. It says "and any related documents."

4 MR. FRANKEL: I don't believe I misread
5 that.

6 MS. WIVELL: Now --

7 MR. SCHEFFLER: Well --

8 MS. WIVELL: -- nonetheless, the case law
9 is clear, and I'd like to make that for the record,
10 that even if you're right that this is beyond the
11 scope of the deposition, which we do not believe it
12 to be, that I have a right to ask these questions.
13 If you have an issue, please address it with the
14 court. We can call the court and the court can
15 direct me to not go on, if you choose to do that.

16 BY MS. WIVELL:

17 Q. Now sir, up till today have any of the
18 defendants who you are speaking for ever admitted
19 that cigarette smoking causes disease?

20 MR. SCHEFFLER: Objection to the form of
21 the question. Same objections as -- as prior
22 stated. This is beyond the scope of this deposition
23 or this witness's competence to answer these --
24 such -- such questions.

25 A. I think the only thing I can say is that you --

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1 you've condensed an extremely complicated subject
2 into very simple terms. The very simple answer to
3 the -- the question itself is no, but around that
4 answer there's -- there's so much information and
5 knowledge that has to be brought into account, what
6 is -- what is cause and all the rest of it. And --
7 and this paper goes some way to debating the
8 questions around that.

9 Q. Now sir, in the beginning paragraph of the
10 document the author says, "In their public relations
11 the tobacco companies are particularly sensitive to
12 the question of 'causality'. To the medical
13 profession and others this attitude is hardly
14 comprehensible. Most doctors and even medical
15 scientists rarely give much thought to what they mean
16 by, quote, cause." Right?

17 A. That's what it says, yes.

18 Q. All right, sir. And you would agree as you sit
19 here today, based on your experience, that most
20 medical professionals do not agree with the companies
21 you represent concerning the issue of smoking and
22 health.

23 MR. SCHEFFLER: Objection to the form of
24 this question. Objection to the fact that this is
25 beyond the scope of this deposition. Objection to

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1 the fact that there has been no basis laid for any
2 relationship with counsel's question to the subject
3 matter of this deposition and no foundation laid for
4 the witness to answer such questions.

5 A. From my knowledge, I -- of course I'm aware that
6 public authorities and the medical profession have a
7 position about cause which is, I suppose the
8 expression is, at odds with the companies' position.
9 But as I say, it's a very complicated issue and often
10 condensed into a very simple statement.

11 Q. Sir, showing you what's been previously marked
12 in this litigation as Plaintiffs' Exhibit 443, this
13 is a document that begins with the Bates number
14 109938433; correct?

15 A. Yes.

16 Q. It's entitled "CIGARETTE SMOKING AND CAUSAL
17 RELATIONSHIPS."

18 A. It is.

19 MR. SCHEFFLER: For the record, let the
20 record reflect that this document is dated 27th of
21 October 1976.

22 MS. WIVELL: Thank you, counsel. I was
23 just going to note that.

24 Q. This document is dated October 27th, 1976;
25 right?

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1 A. Yes.

2 Q. It's signed on page four by Dr. Green; isn't it?

3 A. It has a squiggle on the bottom of page four.

4 There's also the initials SJG.

5 Q. There's also --

6 A. It seems likely to be Green.

7 Q. All right. There's also a thick -- more --

8 strike that.

9 There's also a full signature about halfway down
10 the page; isn't there?

11 A. Which is just slightly more readable, yes.

12 Q. And it says "S. J. Green;" doesn't it?

13 A. It could do.

14 Q. Now sir, have you ever read this document?

15 A. I may have done. I don't think so. But I mean
16 it's got certain similarities of the one we just
17 discussed, of course.

18 Q. All right. Why don't you take a moment and
19 review it.

20 MR. SCHEFFLER: Can we go off the record
21 for a second while he's reading this?

22 THE REPORTER: Off the record, please.

23 (Discussion off the record.)

24 BY MS. WIVELL:

25 Q. Sir, you've now had the opportunity to read what

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1 was previously marked as Plaintiffs' Exhibit 443?

2 A. I have, yes.

3 Q. This is another document which concerns the
4 relationship between cigarette smoking and disease;
5 right?

6 A. In the very broad sense, yes.

7 Q. It discusses in a broad sense whether cigarette
8 smoking causes disease; doesn't it?

9 MR. SCHEFFLER: Objection, use of the
10 document beyond the scope of the deposition, no
11 foundation laid that there's any relationship between
12 this document and these questions to the subject
13 matter of this deposition.

14 A. Can you repeat your question, please?

15 Q. Certainly.

16 Exhibit 443 discusses whether cigarette smoking
17 causes disease; right?

18 MR. SCHEFFLER: Same objection.

19 A. As we've said, in the -- in the broad sense,
20 yes. We're generalizing.

21 Q. And it talks about the public position of the
22 tobacco companies with respect to cigarette smoking
23 and disease being dominated by legal considerations;
24 right?

25 MR. SCHEFFLER: Objection to the form of

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1 the question. Objection as well to the lack of any
2 foundation laid for the use of this document with
3 this witness or that there is any relationship to
4 this document and the subject matter of this
5 deposition. Beyond the scope of the deposition.

6 A. Your last question, I think, was a paraphrase of
7 the first sentence of -- of this document.

8 Q. And in this document Dr. Green talks about the
9 companies' desire to repudiate a causal role for
10 cigarette smoking in order to avoid liability in
11 product-liability cases; isn't that true?

12 MR. SCHEFFLER: Same objections.

13 A. I think again you're -- you're paraphrasing.
14 The word "repudiation" is used in the first
15 paragraph. But in general terms, you're around
16 the -- the mark, yes.

17 Q. And then Dr. Green talks about how the legal
18 considerations dominate the public relations policy
19 of the tobacco industry.

20 MR. SCHEFFLER: Same objections. Lack of
21 foundation, lack of relevance.

22 A. I'll accept what you say with -- it --

23 It's very broad. You're paraphrasing what the
24 document is about. But I'll accept it for these
25 purposes.

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1 Q. Well the document says in the first paragraph in
2 part, "This domination by legal consideration thus
3 leads the industry into a public rejection in total
4 of any causal relationship between smoking and
5 disease and puts the industry in a peculiar position
6 with respect to product safety discussions, safety
7 evaluations, collaborative research, et cetera."
8 Right?

9 A. Those are the specific words, yeah.

10 Q. And sir, you understand based on your
11 preparation for this deposition that in the late '80s
12 there was a public -- or there were public positions
13 taken by the three defendants that you are speaking
14 for that rejected cigarette smoking as being a cause
15 of disease.

16 MR. SCHEFFLER: Objection to the form of
17 the question, objection to the assumptions based in
18 the question, and the timeframe of the question is
19 beyond the scope of this deposition or the documents
20 noticed for this deposition.

21 A. You said the late '80s. Did you mean the late
22 '80s?

23 Q. Oh, I did not. Let me rephrase my question.

24 And sir, you understand based on your
25 preparation for this deposition that in the late '70s

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1 the three defendants that you are speaking for
2 publicly rejected cigarette smoking as being a cause
3 of disease.

4 MR. SCHEFFLER: Objection to the form of
5 the question.

6 A. No, I don't agree with that at all. That's not
7 the conclusion I come to from the preparation I've
8 done for this deposition.

9 Q. All right. Well Dr. Green goes on here to say,
10 "Companies are actively seeking to make products
11 acceptable as safer while denying strenuously the
12 need to do so;" correct?

13 A. It says that, yes.

14 Q. All right. Well let me ask you this: Isn't it
15 true that in the late '70s the defendants that you're
16 speaking for here today never told the public that
17 they were preparing a safer cigarette?

18 MR. SCHEFFLER: Objection to the form of
19 the question. Objection to the assumptions based in
20 the question. It is not established by anything in
21 this record to this date.

22 A. I can't answer because I -- I just don't know.
23 As I say, I've explained to you the -- the
24 preparation I've -- I've gone into, and to answer
25 that question you just put to me would take so much

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1 more research of what was going on in -- in many,
2 many areas of the company. I -- I just don't know
3 the answer.

4 Q. Well did the companies that you're speaking for
5 here today in the late '70s tell the people who were
6 buying their cigarettes that they were actively
7 seeking to make safer products?

8 MR. SCHEFFLER: Objection to the form of
9 the question. Objection, beyond the scope of this
10 deposition. And objection based on the witness's
11 prior answer that there is no competence to answer
12 such a question.

13 A. I don't know what the public were or were not
14 told in that period.

15 Q. All right. Now the memo goes on to say, "The
16 industry has retreated behind impossible demands for,
17 quote, scientific proof whereas such proof has never
18 been required as a basis for action in the legal and
19 political fields." Correct?

20 A. That's what it says.

21 Q. All right. Sir, you're aware in preparation for
22 your deposition today that the companies in the late
23 '70s did take the position that there was no, quote,
24 scientific proof that cigarette smoking caused
25 disease.

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1 MR. SCHEFFLER: Objection to the form of
2 the question.

3 A. I -- I know from my preparation that the issue
4 of terms like "scientific proof" and "causation" were
5 then and I believe still are words and phrases which
6 have particular meanings in -- in different
7 contexts. There -- there are debates carried on by
8 people with a great deal more knowledge than -- than
9 myself.

10 I don't know that we've denied or admitted
11 anything in particular. It's a difficult area.

12 Q. Well sir, are you aware -- no, strike that.

13 After Dr. Green wrote these papers that we've
14 just looked at, Exhibits 501, 314 and 443, he wanted
15 to submit those papers to a CAC conference so they
16 could be discussed by BAT Group members; didn't he?

17 MR. SCHEFFLER: Objection, calls for
18 speculation.

19 A. That's outside my knowledge, Ms. Wivell.

20 Q. Well before we go on, what is the CAC? No,
21 strike that.

22 What was the CAC?

23 MR. SCHEFFLER: Objection. What time?

24 MS. WIVELL: In the late -- let me rephrase
25 the question.

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1 Q. In the late '70s what was the CAC?

2 A. I believe, and I'm not a hundred percent sure, I
3 believe it was -- it was the initials for the
4 Chairman's Advisory Committee.

5 Q. Who was the chairman that's referred to there?

6 MR. SCHEFFLER: Objection.

7 A. At the relevant time I think it was the chairman
8 of B.A.T Industries.

9 Q. Who was?

10 MR. SCHEFFLER: Objection.

11 A. It depends on --

12 It depends on the timing, but --

13 Q. And based on your preparation, do you understand
14 that the CAC met on a fairly regular basis?

15 MR. SCHEFFLER: Objection, overbroad, and
16 form.

17 A. I -- I don't know a great deal about it. I -- I
18 don't think it was a particularly regular meeting.
19 From -- from my fairly limited knowledge of it, I'd
20 be guessing quarterly, maybe half-yearly.

21 Q. All right. And who came to the CAC meetings?

22 A. Again my answers have to be couched with --
23 within limits. I believe the CAC was comprised of
24 the -- the heads of particular subsidiary companies
25 of B.A.T Industries.

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1 Q. And the CAC meetings that related to tobacco
2 were attended by the heads of the BAT Group tobacco
3 companies; weren't they?

4 MR. SCHEFFLER: Objection, overbroad, lack
5 of timeframe, beyond the scope of this deposition.

6 A. I think as a general proposition that follows my
7 understanding, yes.

8 Q. And you know that based on your preparation for
9 this deposition; don't you, sir?

10 A. Not specifically, no. It's -- I --

11 It's one of those things we picked up over a few
12 months.

13 Q. All right. And the CAC met in various cities
14 throughout the world; didn't it?

15 MR. SCHEFFLER: Objection, overbroad,
16 beyond the scope of the deposition.

17 A. I've certainly seen documents which have
18 referred to meetings in -- in particular far-off
19 places, yes.

20 Q. As a matter of fact, Exhibit 743 refers to a CAC
21 conference that was going to take place in Vancouver,
22 British Columbia; right?

23 A. I presume it's British Columbia, yes.

24 Q. And in 1977 there was a CAC conference that took
25 place in Rio de Janeiro; isn't that right?

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1 MR. SCHEFFLER: Objection, beyond the scope
2 of this deposition.

3 A. I heard of a CAC conference in Rio. Whether
4 it's '77, I don't know.

5 Q. All right, sir. And isn't it true that Dr.
6 Green wanted to submit a paper on his views on
7 causation and cigarette smoking to the CAC conference
8 that was scheduled for Rio in 1977?

9 MR. SCHEFFLER: Objection, calls for
10 speculation. Objection, beyond the scope of this
11 deposition. Objection, lack of foundation.

12 A. That's outside my knowledge, Ms. Wivell.

13 Q. Sir, showing you what's previously been marked
14 as Exhibit 318, this is a document that begins with
15 the Bates number 110078077; right?

16 A. Right.

17 Q. It's a March 14th, 1977 letter from Wally Hughes
18 or I. W. Hughes to Dr. Stephen Green; right?

19 A. So it seems, yes.

20 Q. All right. Now at the time Dr. Hughes was
21 senior vice-president of manufacturing, research and
22 development for Brown & Williamson Corporation.

23 MR. SCHEFFLER: Objection -- I'm sorry.

24 Are you finished?

25 MS. WIVELL: Yes.

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1 MR. SCHEFFLER: Objection, lack of
2 foundation.

3 A. That's the title on the -- on the letter, yes.

4 Q. Now have you read this document before, sir?

5 A. I don't believe so, no.

6 Q. Take a moment and please review it.

7 A. I've read it.

8 Q. Now this paper refers -- refers to an upcoming
9 Rio conference; right?

10 A. It says that, yes.

11 MR. SCHEFFLER: I object to the use of this
12 document with this witness. No foundation has been
13 laid that this has anything to do with this
14 deposition -- or the notice of the 30(f)(2) of the
15 two documents that were created some years after
16 this, and the recipients, meetings and discussions of
17 same.

18 Q. Now in this document Mr. Hughes comments on a
19 paper that had been written by Dr. Green.

20 MR. SCHEFFLER: Is that it?

21 Object to the form of the question. And I
22 object that the document speaks for itself. And I
23 object to the use of the document with this witness
24 for the reasons that it's beyond the scope of the
25 deposition notice.

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1 A. It does say about "one of your papers." It does
2 say that, yes.

3 Q. And it says in the second paragraph, "The paper
4 on causality is an interesting one, but personally,
5 since I would view it more as a corporate policy
6 paper, I feel that discussions at the Research
7 Conference would not be useful." Right?

8 A. That's what it says.

9 Q. Now sir, was Dr. Green's paper on cigarette
10 smoking and causal relationships discussed at the Rio
11 conference?

12 MR. SCHEFFLER: Objection, no foundation
13 has been laid that the witness has knowledge about
14 that nor that there's any relationship between that
15 conference and the documents created some years later
16 that are the subject of this deposition.

17 A. To answer your question: I've got no idea,
18 actually.

19 Q. Now Dr. Hughes goes on to talk about "the
20 position in the U.S. being focussed around the
21 existence of high risk 'wipe out' liability;" doesn't
22 he?

23 A. That's what it says.

24 Q. And sir, you understand that, based on your
25 coordination of smoking-and-health cases for BATCO

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1 today, that as of March 1977 there had been
2 product-liability cases in which it was alleged that
3 cigarette smoking caused disease filed against Brown
4 & Williamson in the United States.

5 MR. SCHEFFLER: Objection, lack of
6 foundation, beyond the scope of the deposition.

7 MR. FRANKEL: Object to the form.

8 A. Sorry, I'm going to have ask you to state the
9 question again.

10 Q. Certainly.

11 Based on your coordination of smoking-and-health
12 cases for BATCO, you know that as of March 1977 there
13 had been product-liability cases filed against Brown
14 & Williamson in the United States in which it had
15 been alleged that cigarette smoking causes disease.

16 MR. SCHEFFLER: Same objections.

17 A. Yes.

18 Q. I'm sorry?

19 A. Yes.

20 Q. And you understand that there was a concern at
21 that time that if something was said that suggested
22 cigarette smoking caused disease by one of the
23 companies, that it might be considered as an
24 admission that could be used against Brown &
25 Williamson in the United States.

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1 MR. SCHEFFLER: Objection to the form of
2 the question, objection as -- as vague in time, and
3 objection as beyond the scope of this deposition.

4 MS. WIVELL: Let me rephrase the question.
5 Q. There was a concern in 1977 that if something
6 was said by anyone in any of the companies you're
7 speaking for here today that suggested cigarette
8 smoking caused disease, it might be considered an
9 admission which could be used against Brown &
10 Williamson in cigarette smoking cases in the United
11 States.

12 MR. SCHEFFLER: Objection, lack of
13 foundation in that this witness has no competence to
14 answer any questions about 1977.

15 A. I'm not able to confirm that was a corporate
16 position around that time. I just don't know.

17 Q. You just don't know one way or the other; right?

18 A. I don't know that it was or wasn't.

19 THE WITNESS: Can I ask that we take a
20 five-minute break?

21 MS. WIVELL: Certainly.

22 THE REPORTER: Off the record, please.

23 (Recess taken.)

24 BY MS. WIVELL:

25 Q. Sir, in early 1977 there was a

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1 smoking-and-health conference held in which the chief
2 executive officers and marketing directors from the
3 BAT Group subsidiaries in North America, Australia,
4 Europe, and Brazil discussed the smoking-and-health
5 issue; isn't that true?

6 MR. SCHEFFLER: Objection, beyond the scope
7 of this deposition, lack of foundation.

8 A. I -- I don't know.

9 Q. All right. Let me rephrase the question. In
10 early -- I'm sorry. Strike that.

11 There was a smoking-and-health conference held
12 in 1977 -- I'm sorry, 1976, attended by the chief
13 executive officers and marketing directors from the
14 BAT Group subsidiaries in North America, Australia,
15 Europe, and Brazil at which they discussed the
16 smoking-and-health issue and its effects on
17 marketing; isn't that true?

18 MR. SCHEFFLER: Objection, beyond the scope
19 of this deposition, lack of foundation.

20 A. I've got no knowledge about any meetings in
21 1976.

22 Q. Sir, showing you what's previously been marked
23 as Plaintiffs' Exhibit 591, this is a document that
24 begins with the Bates number 100427791; right?

25 A. I've got that.

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- 1 Q. And Exhibit 591 begins with a letter from P. L.
2 Short; doesn't it?
- 3 A. P. L. Short is mentioned, yes.
- 4 Q. The date of the first page is April 28th, 1977;
5 right?
- 6 A. It is.
- 7 Q. Have you ever seen this document before?
- 8 A. From the face of it, it doesn't seem familiar,
9 no.
- 10 Q. All right. Why don't you take a moment and
11 review it.
- 12 A. Thank you, I've read it.
- 13 Q. Sir, you've now read Exhibit 591.
- 14 A. I have.
- 15 Q. The first page is a cover letter which attaches
16 a report; right?
- 17 A. Yes.
- 18 Q. And the cover letter is written by P. L. Short.
- 19 A. That's right.
- 20 Q. P. L. Short was a BATCO employee; wasn't he?
- 21 MR. SCHEFFLER: Objection, outside the
22 scope of this deposition.
- 23 A. I know nothing about Mr. Short.
- 24 Q. Well sir, if the defendants for whom you are
25 speaking today have represented to the judge in this

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1 case that Mr. Short was in the marketing department
2 at BATCO, would you have any reason to dispute that?

3 MR. SCHEFFLER: Objection. This witness
4 has just stated he has no knowledge of Mr. Short.

5 MR. FRANKEL: Object to the form.

6 A. I've got --

7 If it's been said before, of course I've got no
8 reason to dispute it.

9 Q. Now sir, the letter was sent, according to the
10 top of the page, to all delegates at conference two;
11 right?

12 A. I see, yes.

13 Q. All right. And the -- the first page refers to
14 two marketing meetings that discussed the subject of
15 marketing in the '80s.

16 MR. SCHEFFLER: Okay. Objection to the
17 form of the question, objection to the scope. This
18 document has no relationship to the appreciation
19 document dated May 1980 or the change-of-stance
20 document dated June 1980 which are the subject matter
21 of this deposition, and that no foundation has been
22 laid that this witness has any knowledge about this
23 document or the subject matter of this document
24 whatsoever. It cannot be used to refresh
25 recollection because the witness has testified that

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1 he has no recollection of this time period. And this
2 is beyond the scope of this deposition. It's an
3 improper use of this document.

4 MS. WIVELL: Well obviously I disagree,
5 counsel, and I believe you're improperly coaching the
6 witness. I think that the deposition notice is
7 clear, that it refers to two documents and related
8 documents. This is a related document. We
9 predesignated these documents, so there can be no
10 question that you knew that we were going to be
11 discussing this.

12 And for the record, I'd like to note I'm not
13 deposing Mr. Gilbey, I'm deposing three corporations
14 who do have knowledge here.

15 MR. SCHEFFLER: Objection.

16 MS. WIVELL: And if this witness was not
17 fully prepared, that's not my fault.

18 MR. SCHEFFLER: Objection to counsel's
19 statements. This witness has prepared to address
20 the -- the notice that was submitted by counsel which
21 is of two documents, a document entitled
22 "APPRECIATION" of May 1980 and a document entitled
23 "CHANGE OF CHANCE" of June 1980, and it was to
24 address the authors of the documents, the recipients
25 of the document, all meetings and discussions

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1 relating to the documents, and any related documents.

2 MS. WIVELL: Thank you, counsel.

3 MR. SCHEFFLER: This is not a related
4 document. There has been no foundation laid that
5 this is a related document, nor has there been any
6 foundation laid that this witness has got knowledge
7 of this document. Nor should he, given the scope of
8 this deposition.

9 I've told you repeatedly that this deposition
10 was limited to the custodial issues surrounding the
11 two documents you noticed. I've told you repeatedly
12 that you had the opportunity to ask questions about
13 the stance of the company with respect to smoking and
14 health when you noticed Dr. Proctor, who was the
15 proper witness to pose these questions to. It is our
16 position that this is not the proper scope of this
17 deposition. You've been put on notice to this. This
18 witness has not been prepared to address these
19 issues, nor should he, as your notice didn't request
20 that.

21 MS. WIVELL: Well we disagree.

22 MR. SCHEFFLER: I would suggest --

23 MS. WIVELL: Why don't we just go forward.
24 You're wasting time.

25 MR. SCHEFFLER: I was --

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1 MS. WIVELL: And I really -- I really
2 object to that.

3 I believe there is a question pending. Let's go
4 back to it. And if you just state your -- your
5 objection for the record, we don't need to be doing
6 this.

7 MR. SCHEFFLER: Well let me --

8 MS. WIVELL: Now, sir, I would like to just
9 go on. I think you made your record clear, and the
10 colloquy has -- there's no reason for wasting time in
11 doing this.

12 MR. SCHEFFLER: I would suggest, --

13 MS. WIVELL: Sir --

14 MR. SCHEFFLER: -- counsel, that you move
15 on to the subject matter of this deposition. As you
16 know, it's about 4:30 a.m. in Minnesota; we can't
17 reach the court to rule on the fact that you're way
18 beyond the scope of this deposition at this time.

19 MS. WIVELL: Sir --

20 MR. SCHEFFLER: I would suggest you move to
21 the subject matter of the deposition and so -- and
22 leave this issue until such time as we can reach the
23 court.

24 MS. WIVELL: Well sir, you're the one who
25 insisted I come to London to take this deposition.

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1 And I do believe that this is the proper subject
2 matter of this deposition.

3 MR. SCHEFFLER: Well it's not.

4 MS. WIVELL: Furthermore, the case law is
5 clear that even if it's not, I can ask questions of
6 this witness beyond the scope. But I don't believe
7 it's beyond the scope.

8 MR. FRANKEL: Unless it's an abuse of the
9 discovery process.

10 MS. WIVELL: Excuse me. Excuse me,
11 counsel. Let me finish and let's go on.

12 BY MS. WIVELL:

13 Q. Now sir, Mr. Gilbey, the first page of Exhibit
14 591 refers to two marketing meetings.

15 MR. SCHEFFLER: Objection, document speaks
16 for itself. The witness has no independent knowledge
17 and there's been no foundation laid for same. Beyond
18 the scope of the deposition notice.

19 A. The first sentence talks about the first and
20 second conference on marketing -- marketing in the
21 '80s.

22 Q. And it refers to agreements reached at those two
23 conferences; doesn't it, sir?

24 MR. SCHEFFLER: Objection, document speaks
25 for itself. The witness has no independent

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1 knowledge, as the record has so stated. Beyond the
2 scope of the deposition notice.

3 A. The note refers to the agreements reached, yes.

4 Q. And it approves -- I'm sorry, strike that.

5 It refers to the agreements being approved by
6 Mr. Sheehy.

7 MR. SCHEFFLER: Same objections.

8 A. It talks about "The agreements reached in the
9 first -- at the first and second Conferences on
10 Marketing in the 80's, held in October 1976 and March
11 1977, have been approved by Mr. Sheehy."

12 MR. SCHEFFLER: Let the record reflect that
13 the witness is reading from the Exhibit 591, the
14 first sentence. And let the record also reflect that
15 this was not one of the predesignated documents as
16 relating to the subject matter of this deposition, it
17 was an exhibit --

18 MS. WIVELL: Well sir --

19 MR. SCHEFFLER: -- from a prior
20 deposition.

21 MS. WIVELL: Which was predesignated.

22 BY MS. WIVELL:

23 Q. Now sir, it also encloses a copy of the report
24 that had been -- or the agreement which had been
25 approved by Mr. Sheehy.

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1 A. Apparently it does, yes.

2 Q. It --

3 And the first page also references an upcoming
4 CAC meeting to be held in May.

5 MR. SCHEFFLER: Same objections.

6 A. It talks about "the forthcoming Chairman's
7 Advisory Conference," in brackets, Roman II, "in
8 May," yes.

9 MR. SCHEFFLER: Let the record reflect that
10 the witness is reading from the first page of Exhibit
11 591 and not testifying as of independent knowledge.

12 MS. WIVELL: I object to counsel's
13 coaching, I object to counsel's comments, and I
14 object to counsel's continued invasion in this
15 deposition contrary to the court's order.

16 MR. SCHEFFLER: And I object to the
17 improper use of this witness by counsel for
18 plaintiffs in trying to examine on issues unrelated
19 to the scope of the deposition notice served on -- on
20 the defendants.

21 Q. Now sir, if we turn to the second page of the
22 document, there is the report that had been approved
23 by Mr. Sheehy; right?

24 MR. SCHEFFLER: Objection, document speaks
25 for itself.

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1 A. Apparently it's the report, yes.

2 Q. And it's entitled "SMOKING & HEALTH, ITEM 7:

3 THE EFFECT ON MARKETING."

4 MR. SCHEFFLER: Same objections.

5 A. That's the heading, yes.

6 Q. Now the document talks about a new marketing

7 policy that had been agreed to; --

8 MR. SCHEFFLER: Objection.

9 Q. -- doesn't it?

10 MR. SCHEFFLER: Objection. Document speaks

11 for itself.

12 A. The --

13 I'll have to just go from the -- the document.

14 "In line with the new policy for marketing agreed at

15 Hot Springs," yes.

16 Q. And --

17 MR. SCHEFFLER: Let the record reflect the

18 witness was reading the first line of the document

19 Bates stamp number 100427792.

20 MS. WIVELL: Actually the record should

21 reflect that the witness was not reading the first

22 line of the document.

23 Q. Now sir, there was a policy that had been agreed

24 to with regard to smoking and health. Isn't that

25 true?

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1 MR. SCHEFFLER: Objection. The witness has
2 already testified he knows nothing about this
3 document. Mischaracterization of testimony.

4 A. I think the summary for the document is -- is --
5 is that -- is the first sentence. Talks about "the
6 new policy for marketing agreed at Hot Springs,
7 strategies were evolved which were 'positive and
8 explicit in the field of Smoking & Health.'" That's
9 what it says.

10 Q. All right. Now sir, the strategies that are --
11 were agreed to at this conference are described in
12 the document; aren't they?

13 MR. SCHEFFLER: Objection, the document
14 speaks for itself.

15 A. I think the strategies are -- are summarized, as
16 it -- as it seems, from the second paragraph of the
17 document.

18 Q. Could you turn to the page that ends with Bates
19 number 799. Bears a heading entitled "TACTICS;"
20 right?

21 A. That's right.

22 Q. And the tactics that were agreed on concerning
23 publicity were directed towards reassuring smokers;
24 isn't that true, sir?

25 MR. SCHEFFLER: Objection, paraphrasing the

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1 sentence of the document. The document speaks for
2 itself. No independent recollection of this document
3 has been demonstrated with this witness, nor is there
4 any attempt made to relate this document or this
5 question to the subject matter of this deposition.
6 Beyond the scope.

7 A. I'll rely on the -- the wording itself, "The
8 main objective for all tactics on publicity is
9 directed towards achieving reassurance," underlined,
10 "amongst a variety of 'publics', including smokers."

11 Q. And sir, isn't it true that after the
12 conferences that there was a policy -- I'm sorry,
13 strike that.

14 Isn't it true that after the conferences that
15 are referred to in Exhibit 591, that the tactics
16 taken by the companies which you represent did
17 reassure smokers?

18 MR. SCHEFFLER: Objection, lack of
19 foundation, no relationship shown between this
20 document and the subject matter of this deposition,
21 beyond the scope, as well as no foundation laid that
22 this witness has any knowledge about this time period
23 whatsoever.

24 A. I've got no knowledge to confirm or deny your
25 statement, Ms. Wivell.

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1 MS. WIVELL: I object to counsel's coaching
2 the witness in violation of the court order.

3 MR. SCHEFFLER: I'm not coaching and it's
4 not in violation.

5 Q. Now sir, in addition to CAC conferences and
6 marketing conferences, from time to time the BAT
7 Group members would get together and hold research
8 and development conferences; right?

9 MR. SCHEFFLER: Objection, lack of
10 foundation, assumes facts not in evidence, no
11 relationship between that question and the subject
12 matter of this deposition.

13 A. I think it's a fairly broad question. Are we
14 talking about a particular time, or are we talking
15 about a specific time?

16 Q. All right. In the late '80s you're aware that
17 research and development conferences were held that
18 were attended by representatives of the various BAT
19 Group tobacco companies.

20 MR. SCHEFFLER: Objection to the form of
21 the question. Objection, no relationship between
22 that question and that time period and this
23 deposition notice of May 1980 and June 1980
24 documents.

25 A. You said the late '80s. Are we --

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1 Q. I'm sorry. If I did I misspoke. Thank you for
2 pointing that out.

3 Sir, in the late '70s research and development
4 conferences were held which were attended by
5 representatives of the various BAT Group tobacco
6 companies.

7 MR. SCHEFFLER: Objection.

8 Q. Right?

9 MR. SCHEFFLER: Objection, overbroad.
10 Objection, has no relationship to the scope of this
11 deposition.

12 A. I -- I really don't have any specific knowledge
13 about those conferences.

14 Q. Sir, showing you what's previously been marked
15 as Plaintiffs' Exhibit 301, this is a document that
16 begins with the Bates number 110083832; correct?

17 A. That's right.

18 Q. It's entitled "RESTRICTED, NOTES ON GROUP
19 RESEARCH & DEVELOPMENT CONFERENCE, SYDNEY, MARCH
20 1978."

21 A. That's the heading on this document, yes.

22 Q. And it was attended by Dr. Green?

23 MR. SCHEFFLER: Objection, the document
24 speaks for itself. No foundation laid that this
25 witness has any knowledge of this conference or this

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1 document or anything surrounding it, and no
2 foundation laid that this has any relevance to the
3 subject matter of this deposition.

4 A. S. J. Green is the first name on the list here,
5 yes.

6 Q. And as a matter of fact, if we look at the end
7 of the document, we see his initials at the bottom;
8 don't we?

9 MR. SCHEFFLER: Same objections.

10 A. We see SJG, yes.

11 Q. All right. For the record, this document is
12 dated April 6th, 1978; isn't it?

13 MR. SCHEFFLER: Objection.

14 A. It is, yes.

15 Q. All right. Would you take a look at the first
16 paragraph of the document, Exhibit 301. Read it to
17 yourself.

18 A. I've read that, yes.

19 Q. The subject of the relationship of smoking and
20 disease was discussed at this conference; wasn't it,
21 sir?

22 MR. SCHEFFLER: Objection, improper use of
23 the document. No relationship shown between this
24 document and the subject matter of this deposition.
25 No foundation laid that this witness has any

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1 independent knowledge nor is he competent to
2 interpret the paragraph in this document, and it's
3 not refreshing recollection as there is no
4 recollection expressed that the witness needs to be
5 refreshed upon or has.

6 MS. WIVELL: I object to your coaching the
7 witness.

8 A. To answer your question, I -- I just have to
9 rely on the second sentence, I think. It talks about
10 "Additional evidence of smoke-dose related incidence
11 of some diseases," that seems to be -- "associated
12 with smoking," that seems to be the subject matter
13 of -- of that paragraph anyway.

14 Q. And the scientific basis for the case against
15 smoking was discussed at this conference; wasn't it?

16 MR. SCHEFFLER: Objection, calls for
17 speculation.

18 A. It may have been. It doesn't --
19 It's not immediately apparent.

20 Q. Well the first paragraph starts off by saying,
21 "There has been no change in the scientific basis
22 for the case against smoking. Additional evidence of
23 smoke-dose related incidence of some diseases
24 associated with smoking has been published. But
25 generally this has long since -- long ceased to be an

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1 area for scientific controversy." Correct?

2 A. That's what the document says, yes.

3 Q. All right. And sir, you understand that these
4 are minutes of the conference that took place in
5 Sydney, Australia in March of 1978; don't you?

6 MR. SCHEFFLER: Objection, lack of
7 foundation. Objection, no recollection shown that
8 this witness has any knowledge about this document.
9 Nor does the document refer to these as minutes.

10 A. The -- the document head is "NOTES." That --
11 yes, that's what it says.

12 Q. And by "notes," you understand that to be
13 minutes; right?

14 MR. SCHEFFLER: Objection.

15 A. I think in some contexts minutes has a more
16 formalistic meaning. I'll just rely on the word
17 "notes," I think, for this purpose.

18 Q. All right. Could you turn to note 46 that
19 appears on the end of page 837.

20 A. Yes, I've got that.

21 Q. Why don't you read it to yourself.

22 A. Yes, I've read that paragraph.

23 Q. Sir, the ability to make cigarettes of
24 substantially reduced biological activity was
25 discussed at this conference; wasn't it?

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1 MR. SCHEFFLER: Objection, beyond the scope
2 of this deposition. Objection, calls for
3 speculation. Objection, lack of foundation that this
4 witness has any knowledge with respect to that issue.

5 A. I think to answer your -- your question, I'd --
6 I'd merely have to read paragraph 46 because that's
7 all -- that's all I know about this document.

8 Q. Well sir, you have no reason to believe that
9 what's written here is not accurate; --

10 MR. SCHEFFLER: Objection.

11 Q. -- do you?

12 MR. SCHEFFLER: Objection. He has no
13 reason to believe it's accurate or inaccurate.

14 MS. WIVELL: Objection to your coaching,
15 counsel, and your violation of the court's order.

16 MR. SCHEFFLER: Well that's an unfair
17 question, as counsel knows.

18 A. I can only rely on the document here.

19 Q. Well sir, let me restate my question.

20 You have no reason to believe that what's
21 written here is not accurate; do you?

22 MR. SCHEFFLER: Same objection.

23 A. No.

24 Q. Sir, it says, "Cigarettes of substantially
25 reduced biological activity (SRBA) can be made by

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1 product modifications and will continue to present a
2 range of marketing opportunities. By SRBA is meant
3 cigarettes where epidemiology would show no greater
4 incidence of disease for smokers than non-smokers."
5 Did I read that correctly?

6 A. You did.

7 Q. Now sir, isn't it true that in the late '70s
8 there was discussion within the BAT Group about
9 whether the companies should recognize the
10 statistical association between smoking and certain
11 diseases publicly?

12 MR. SCHEFFLER: Objection, calls for
13 speculation. Beyond the scope of this deposition.

14 A. I think I can only answer your question by
15 referring to the documents that we've discussed this
16 morning. The discussion in those documents is really
17 the extent of my knowledge.

18 Q. All right, sir. And it's clear from the
19 exhibits that we have looked at so far, Exhibit 301,
20 591, 318, 443, 314, that there was a dialogue going
21 on during that period between employees of various
22 BAT Group companies on the issue of whether smoking
23 caused disease; right?

24 MR. SCHEFFLER: Objection, no foundation
25 laid for this witness's competence to testify as to

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1 those matters. Objection, beyond the scope of this
2 deposition. And objection, mischaracterization of
3 the exhibits. The exhibits speak for themselves.
4 A. I think I have to be careful in -- in -- in
5 giving you a "yes" or "no" answer to your question
6 because I think again we're talking about this issue
7 of smoking and disease and -- and I'm not qualified
8 to -- to get into that. I -- I -- I really just have
9 to rely on the discussions we've had on the documents
10 and -- and the subjects that -- that those
11 conferences discussed.

12 Q. Sir, keeping in mind that you're not a
13 scientist, what you have read here this morning in
14 Exhibits 301, 591, 318, 443 and 314 demonstrate that
15 there was a dialogue going on between employees of
16 various BAT Group companies during this time period
17 about the issue of whether smoking caused disease;
18 right?

19 MR. SCHEFFLER: Objection -- objection to
20 the -- to counsel's misuse of exhibits in this case,
21 objection to beyond the scope of the deposition
22 notice, and objection and -- on the basis of lack of
23 foundation that this witness has any competence to
24 address that time period or those documents.

25 A. I'm having difficulty in just saying "yes" or

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1 "no" to -- in simple terms to your question because,
2 you know, you're -- you're wrapping up in -- in --
3 your question in fairly simple terms this issue of,
4 you know, what was debated.

5 There was clearly a dialogue going on about a
6 variety of matters, which are detailed in the
7 documents we've referred to, and -- and I've -- you
8 know, I don't want to characterize that in -- under
9 one umbrella of smoking and disease.

10 Q. All right. I'm not asking you whether or not
11 smoking causes disease. But it's clear, wouldn't you
12 agree, that people were talking about that issue
13 during this period in the late '70s?

14 MR. SCHEFFLER: Objection to the form of
15 the question, "that issue" being undefined.

16 MS. WIVELL: All right. Well let me --

17 MR. SCHEFFLER: Objection as well to --

18 MS. WIVELL: Let me rephrase the question.

19 MR. SCHEFFLER: Do you want to hear the
20 rest of my objection?

21 MS. WIVELL: No, because I'll withdraw it.

22 MR. SCHEFFLER: Okay.

23 Q. Keeping in mind I'm not asking you whether or
24 not smoking causes disease, you would agree, wouldn't
25 you, that people were talking about the issue of

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1 smoking and health in the period of the late '80s
2 within the BAT Group companies; weren't they?

3 MR. SCHEFFLER: Objection, overbroad.
4 Objection, no foundation laid that this witness has
5 any knowledge of that time period or that that time
6 period is relevant at all to this case -- this
7 deposition. Excuse me.

8 A. I think my last answer was -- was -- was the one
9 I stick to, really. I'm -- I'm not disagreeing. Of
10 course there was a dialogue going on. My discomfort
11 only becomes -- only comes because we're trying to
12 wrap it all up under one description of smoking and
13 health. I certainly don't feel comfortable in doing
14 that or competent to do that. I'm saying to you,
15 yes, of course the documents demonstrate there is a
16 dialogue between various people within BATCO, and
17 perhaps others, about a variety of issues. I just
18 want to rely on identifying those issues from the
19 documents and -- and not trying to dilute the
20 description.

21 Q. All right.

22 MR. SCHEFFLER: We've been going for about
23 an hour. Let's take a break.

24 MS. WIVELL: Actually we haven't been going
25 about an hour without a break, but that's all right.

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1 THE REPORTER: Off the record, please.

2 (Recess taken.)

3 (Plaintiffs' Exhibit 744 was marked
4 for identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as
7 Plaintiffs' Exhibit 744, this is a document that
8 begins with the Bates number 109881381; right?

9 A. That's correct.

10 Q. It's entitled "SMOKING AND HEALTH ISSUES
11 CONFERENCE, CHELWOOD, NOVEMBER 5th through 8th,
12 1979;" correct?

13 A. That's the heading, yes.

14 Q. Okay. Sir, you would agree that at the -- as
15 the '70s came to a close, there was a concern within
16 the BAT Group that the industry needed to review its
17 current attitude toward smoking and health; isn't
18 that true?

19 MR. SCHEFFLER: Objection to the form of
20 the question.

21 A. I'm not competent to say "yes" or "no" to that.
22 I don't -- I don't know the state of -- of play in --
23 in the business to -- to know whether that's true or
24 not.

25 Q. Well sir, you've read that document; haven't

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1 you?

2 A. I've seen this document before, yes.

3 Q. This is one of the ones I predesignated in
4 preparation for this deposition.

5 A. That's right.

6 Q. And sir, it reflects a concern that if the BAT
7 Group was to maintain credibility, it had to review
8 its current attitude on smoking and health; isn't
9 that true?

10 A. Let me just refresh my memory with the document,
11 because you -- you've briefly summarized a fairly
12 lengthy document now.

13 Can you now repeat your question, please?

14 Q. Yes, sir.

15 Exhibit 744 reflects a concern that if the BAT
16 Group was to maintain credibility, it had to review
17 its attitude on smoking and health.

18 A. I wouldn't accept that as a -- a summary of this
19 document, no.

20 Q. Well sir, I'm not suggesting it's a summary of
21 the whole document, but it is an issue that was
22 addressed in the document; right?

23 MR. SCHEFFLER: Objection to the form. The
24 document speaks for itself.

25 A. Can we identify where -- where it says that?

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1 Q. Point three. Sir, there it says, "We have to
2 recognize that there is a statistical association
3 between smoking and certain diseases. Thus, if its
4 credibility is not to be lost BAT and the industry
5 need to review its current attitude in the light of
6 the legal position." Did I read that correctly?

7 MR. SCHEFFLER: Actually it says "needs,"
8 counsel, plural.

9 Q. Well let me rephrase the question.

10 And there at point three it says, "We have to
11 recognize that there is a statistical association
12 between smoking and certain diseases. Thus, if its
13 credibility is not to be lost BAT and the industry
14 needs to review its current attitude in the light of
15 the legal position."

16 A. That's what the words, yes, say.

17 Q. Now sir, Exhibit 744 are the notes of a
18 smoking-and-health conference that was held at the
19 Chelwood Conference Center in November of 1979.

20 MR. SCHEFFLER: Objection, lack of
21 foundation.

22 A. I know nothing about the paper beyond what it
23 says. It calls itself a "Synopsis." I don't know
24 who prepared it or any more about it.

25 Q. Well if we turn to the conclusion, it says, "The

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1 Conference has served to crystallise further the
2 BAT's more vigorous attitude towards public affairs
3 including smoking and health...." Right?

4 A. That's part of what it says, yes.

5 Q. Sir, when you realized I had designated this
6 document to be discussed today, did you try and find
7 out who actually wrote it?

8 A. No, I didn't. No.

9 Q. Did you try and find out anything about the
10 source of this document?

11 A. No, I didn't.

12 Q. Did you talk to any of the people who attended
13 the smoking-and-health conference in Chelwood in
14 1979?

15 MR. SCHEFFLER: Objection. Let the record
16 reflect that this document, although predesignated,
17 was not the subject matter of this deposition; it was
18 not either an appreciation document or a

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1 change-of-stance document.

2 A. I didn't make any of those inquiries you
3 mentioned. I don't know who attended this conference
4 or anything about the conference.

5 Q. Now sir, it says in -- on the last page of
6 Exhibit 744, "Headquarters will also take action and
7 will provide the necessary policy and other support."
8 Right?

9 A. That's what it says.

10 Q. Sir, as a matter of fact, the policy on smoking
11 and health was discussed by B.A.T. headquarters,
12 including Dr. Blackman and Mr. Sheehy; right?

13 MR. SCHEFFLER: Objection.

14 MR. FRANKEL: Object.

15 MR. SCHEFFLER: Objection to the form of
16 the question, objection that it's overbroad, and also
17 objection to the lack of foundation.

18 A. I -- I can't answer the question as it's put.
19 Perhaps we can break it down a bit.

20 I don't know what time we're talking about or
21 what particular discussions you've got in mind.

22 Q. All right. Well sir, in 1979 when this document
23 was written it said "Headquarters will also take
24 action and will provide the necessary policy and
25 support." You know from reviewing files in

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1 preparation for your deposition that actually the
2 policy relating to smoking and health was discussed
3 at length in the early '80s; wasn't it?

4 A. I reviewed the -- the file that I referred to
5 earlier which covers, I think I said, the end of '79
6 through to the end of '80, and there was certainly an
7 ongoing series of notes in that file. Beyond that
8 I -- I -- I don't know about what discussions may or
9 may not have taken place.

10 Q. Well based on what you know from reviewing the
11 file, those discussions concerned the issue of --
12 smoking and health -- policy.

13 MR. SCHEFFLER: Objection, overbroad.

14 A. There -- there was --

15 There's a whole series of documents there about
16 positions in respect of a matter of -- of public
17 interest and public position. That's what the file
18 showed, that there was -- that those notes are flying
19 around in that period.

20 Q. And sir, it says at the bottom of the page,
21 "Headquarters will continue to advise on basic
22 attitudes to the public health issues in guidelines
23 and other documents circulated from time to time. If
24 in doubt companies should consult the centre when
25 planning their initiatives." Right?

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1 MR. SCHEFFLER: It actually says "primary
2 health issues," not "public health issues."

3 A. Subject to that, yes, that's what it says.

4 Q. Now sir, those documents that were in the file
5 that you reviewed in preparation for your deposition
6 today did show that people at BATCO headquarters were
7 discussing the -- the health issues relating to -- to
8 smoking in the year that follows this
9 smoking-and-health issues conference at Chelwood;
10 right?

11 MR. SCHEFFLER: Objection, overbroad.

12 A. The -- the file shows that certain people were
13 giving consideration to -- to those issues. I mean
14 that -- that's my summary of what the file shows.

15 Q. And who were the people that you recall from
16 your review who were giving consideration to those
17 issues?

18 A. It was largely the public affairs department and
19 the research and development area.

20 Q. And also Mr. Sheehy?

21 A. Sheehy was mentioned on several of the
22 documents. I -- I wouldn't go so far as to say the
23 file told me he was -- he was a specific part of the
24 discussion. I mean he was -- he was copied with
25 various of the papers I've seen.

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1 Q. And the documents reflect the discussion between
2 members of the public affairs department and research
3 and development over trying to develop a policy which
4 would then be taken to the BATCO board; right?

5 MR. SCHEFFLER: Objection, overbroad,
6 vague.

7 A. The -- the papers show, I think, as to what
8 the -- what the position of the company might be
9 ultimately with a view of putting that position to
10 the -- to the board, yes. That -- that's correct.

11 Q. And sir, the papers that you looked at show a
12 concern that B.A.T. not lose credibility in the eyes
13 of the public; didn't they?

14 MR. SCHEFFLER: Objection.

15 MR. FRANKEL: Objection to form.

16 MR. SCHEFFLER: Objection, overbroad.

17 A. Those words were certainly used. I wouldn't say
18 that's the only or -- or even the main driver. Those
19 words were used in the papers I've -- I've seen. I
20 know nothing more about those papers, of course,
21 from -- from that time period.

22 Q. And did you attempt to speak to any of the
23 people from that period who were reflected or
24 mentioned in those memos who are still alive?

25 A. I attempted to speak to -- to -- to -- to one

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1 person only.

2 Q. Who was that?

3 A. That was a Mr. Leach.

4 Q. And were you able to speak with him?

5 A. No, I wasn't. He wasn't available.

6 (Plaintiffs' Exhibit 745 was marked
7 for identification.)

8 BY MS. WIVELL:

9 Q. Sir, showing you what's been marked as
10 Plaintiffs' Exhibit 745, this is a document which
11 begins with the Bates number 109881374; right?

12 A. Yes.

13 Q. It's entitled "Draft Paper for 1980 Tobacco
14 Division C.A.C."

15 A. That's what it says.

16 Q. And it's also entitled "CURRENT ISSUES IN
17 SMOKING AND HEALTH."

18 A. It is.

19 Q. And it bears a stamp showing that it was
20 received by Lionel Blackman January 28th, 1980;
21 right?

22 A. It looks like 1980, yeah.

23 Q. And you understand that that stamp means that
24 Dr. Blackman received it.

25 MR. SCHEFFLER: Objection.

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1 A. It's a --

2 It's a fair guess that it's his receiving stamp,

3 yes.

4 Q. Well -- strike that.

5 If you turn to the end of the document, we see

6 that it's dated September 24th, 1979.

7 A. Yes.

8 Q. And the initials are DGF.

9 A. That's what they are, yes.

10 Q. All right. And you understand that DGF is Mr.

11 D. G. Felton, who was a manager at BATCO R&D; right?

12 A. I know that Mr. Felton has those initials. I

13 know he was a manager at some -- at R&D, yes.

14 Q. And you know that during this time he was

15 involved as a smoking-and-health advisor to the BATCO

16 board; right?

17 A. I'm -- I'm not sure what his particular role

18 was. I think I've heard -- heard that said, but I

19 don't know with any certainty.

20 Q. Okay. But if we see, in documents like this

21 that bear DGF, we -- it would be fair to assume that

22 they came from Mr. Felton who was an employee of the

23 company.

24 MR. SCHEFFLER: Objection to the form.

25 A. I -- I wouldn't want to bless that proposition,

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1 as it were, because I just don't know. But I

2 can't -- can't say any more than that.

3 Q. All right. But you do know that Mr. Felton was
4 an employee of BATCO who was involved in
5 smoking-and-health issues; right?

6 A. I think I've -- I've just answered that I've
7 been told or have picked up from somewhere that that
8 may or may -- that probably was the case. I don't
9 know for -- for sure.

10 Q. And you understand that Mr. Felton even went on
11 behalf of BATCO to the United States from time to
12 time and wrote memos about those trips; right?

13 MR. SCHEFFLER: Objection, beyond the scope
14 of this deposition, lack of foundation.

15 A. I -- I don't know that. I don't think I've -- I
16 don't believe I've seen any notes of -- of his
17 trips. I -- I don't know any more about him than I
18 said, I think.

19 Q. All right, sir. You've reviewed this document;
20 haven't you?

21 A. I saw it as part of the preparation, yes.

22 Q. All right. And this document has as one of its
23 subjects the discussion about the legal position the
24 companies have to take as opposed -- or I'm -- strike
25 that.

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1 This document has as one of its subjects a
2 discussion about how the companies' legal position
3 bears on what it -- they can say publicly; right?

4 MR. SCHEFFLER: Objection to the form.

5 A. Can you help me with maybe pointing to the part
6 you're thinking of there?

7 Q. Certainly. Now could you turn to point three.

8 A. On page two, yeah.

9 Q. Yes. It says, "Paradoxically, the encouraging
10 developments outlined above have been thrown" -- or
11 I'm sorry, strike that.

12 It says, "Paradoxically, the encouraging
13 developments outlined above have thrown up the
14 greatest weaknesses in the controversy. For legal
15 reasons, which are easy to appreciate, the industry
16 is unable to claim credit for these developments or
17 to use the results directly in any campaign to
18 popularise the smoking of low delivery products."
19 Right?

20 A. That's what it says.

21 Q. Now sir, what Mr. Felton is referring to is the
22 development of a low-delivery cigarette; right?

23 A. Can I read the part above and I'll be able to
24 answer.

25 MR. SCHEFFLER: Let me just interpose an

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1 objection that the document speaks for itself.

2 A. That -- that may be right. As I say, I mean
3 I've -- I've read this document, but I'm not a -- an
4 authority on its contents or its -- its genesis. But
5 it certainly in the earlier part refers to recent
6 developments.

7 Q. Now sir, in fact the document starts out,
8 "Undoubtedly, the most encouraging recent
9 development in the controversy over smoking and
10 health has been the recognition by scientific and
11 medical authorities that modern developments in low
12 tar delivery products imply that smokers may be
13 exposed to a greatly reduced risk compared with that
14 incurred by smokers twenty years ago;" right?

15 A. That's what it says.

16 Q. And he goes on to say on page two, immediately
17 above point three -- I'm sorry, strike that.

18 He goes on to say in point two, immediately
19 above point three, that "As a result of the increase
20 in cigarette consumption by females elsewhere in
21 recent years, it is probable that female death rates
22 from smoking associated diseases will continue to
23 increase, although, because women tend to smoke lower
24 delivery products, these rates are unlikely to reach
25 the levels attained by male mortality statistics in

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1 the past." Right?

2 A. That's what it says.

3 Q. Now -- and sir, this does reflect a -- strike
4 that.

5 Sir, you have no information which would
6 contradict what's written in the portions of this
7 document that we have been discussing.

8 MR. SCHEFFLER: Objection to the form of
9 the question.

10 A. I know nothing about the -- the document or --
11 or any -- anything surrounding it other than -- than
12 the document itself. I mean I just don't know
13 anything about it.

14 Q. Is Mr. Felton still alive, sir?

15 A. I don't know.

16 Q. Did you attempt to find out if he was still
17 alive in preparation for your deposition today?

18 A. No, I didn't. I didn't see the necessity.

19 Q. Is there anyone within the company who would be
20 able to tell us whether what Mr. Felton says here is
21 wrong?

22 MR. SCHEFFLER: Objection. What --
23 Objection to the form of the question.

24 Q. Let me rephrase it.

25 Is there anyone presently employed by the

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1 companies that you're speaking for here today who
2 would be able to tell us whether what Mr. Felton says
3 here in Exhibit 745 that we've discussed is
4 incorrect?

5 MR. SCHEFFLER: Anything in 745, counsel?
6 Objection, overbroad.

7 MS. WIVELL: The portions that we talked
8 about.

9 MR. SCHEFFLER: Same objections. Still
10 overbroad. And vague.

11 A. I think the answer is I don't believe there's
12 anyone, no.

13 Q. Now sir, Stephen Green retired from BATCO at the
14 end of 1979; didn't he?

15 A. I don't know when he retired.

16 Q. Well do you understand that Dr. Blackman became
17 head of research and development on Dr. Green's
18 retirement?

19 A. I didn't know he immediately followed. I -- I
20 believe from information I've seen in preparation
21 that Blackman came along around that period, '78,
22 '79.

23 Q. Do you understand that Dr. Blackman served as
24 general manager of group research and development
25 from the end of October 1978 until November 1979?

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1 A. If you're reading from the Florida
2 interrogatories, then I understand that to be the
3 case.

4 Q. Is that where you got your information
5 concerning Dr. Blackman's employment?

6 A. Yes, it is.

7 Q. All right. Sir, let me show you -- well I'll
8 mark this, the Florida interrogatories that you just
9 referred to.

10 (Plaintiffs' Exhibit 746 was marked
11 for identification.)

12 BY MS. WIVELL:

13 Q. Sir, showing you what's been marked as
14 Plaintiffs' Exhibit 746, these are the responses and
15 objections of defendant British-American Tobacco
16 Company Limited to plaintiffs' November 4th, 1996
17 interrogatory to British-American Tobacco Company
18 Limited filed in the state of Florida case.

19 A. That's correct, yeah.

20 Q. And by the state of Florida case, we're talking
21 about the state of Florida Attorney General's case;
22 right?

23 A. Correct.

24 Q. And if we turn to the eighth page, there's
25 information provided by British-American Tobacco

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1 Company concerning Dr. Blackman's employment; right?

2 A. Yes.

3 Q. Is this information accurate?

4 A. I believe it is, yes.

5 Q. It says here -- I'm sorry.

6 According to this information, Dr. Blackman
7 served as general manager of group research and
8 development from October 1978 until November of 1979.

9 A. That's what it says.

10 Q. And he worked in the research and development
11 department of B.A.T. Services Limited from November
12 of 1979 until 1980?

13 A. That's what it says.

14 Q. And Dr. Blackman was a member of the BATCO board
15 of directors from November 1980 until December of
16 1984.

17 A. It also says that, yes.

18 Q. And he retired in 1984.

19 A. I believe so, yes.

20 Q. All right. Now sir, did you understand that Dr.
21 Blackman was the successor of Dr. Green?

22 MR. SCHEFFLER: Objection, asked and
23 answered.

24 A. I -- I didn't know that, no.

25 Q. But you understand that he, whether he was the

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1 immediate successor, did follow Dr. Green in the
2 position that Dr. Green had held.

3 A. Well I have to say I didn't know -- I didn't
4 know what position Dr. Green actually had, so whether
5 he was successor in the true sense of the word I -- I
6 just didn't know.

7 Q. Now sir, in April of 1980 Dr. Green appeared on
8 BBC; didn't he?

9 MR. SCHEFFLER: Objection.

10 A. I don't know.

11 Q. Well are you aware of a document entitled --
12 that is a transcript of a BBC telecast entitled "A
13 DYING INDUSTRY" which is within the files of your
14 companies?

15 MR. SCHEFFLER: Objection, assumes facts
16 not in evidence. Objection, beyond the scope of this
17 deposition. Objection, lack of foundation.

18 A. I don't think I've ever seen it, no.

19 Q. Sir, showing you what's been previously marked
20 as Exhibit 512, this is a document entitled "A DYING
21 INDUSTRY;" right?

22 A. That's what it says.

23 Q. And the Bates number of Exhibit 512 is
24 301140234.

25 A. That's correct.

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1 Q. According to the face of the document, it is a
2 Tellex Report of a BBC broadcast prepared for -- for
3 BAT Company Ltd.; right?

4 MR. SCHEFFLER: Objection to the form of
5 the question, lack of foundation, beyond the scope of
6 the deposition notice.

7 A. I can only go by what it says on -- on the front
8 sheet, it says a Tellex Report from a reporting
9 service, and BBC TV is -- is mentioned at the
10 bottom. That's all I know about it so far.

11 Q. Forgive me if I'm being repetitious, but were
12 you aware of the fact that Dr. Green appeared on the
13 BBC and talked about the -- the smoking -- the
14 cigarette industry?

15 MR. SCHEFFLER: Objection. It was asked
16 and answered.

17 A. No. No. As I said, I wasn't aware.

18 Q. All right. I believe Dr. Green's comments are
19 found up to and including the page that ends with
20 241. Would you take a moment and review that portion
21 of the document. You feel free to review the rest of
22 it, but that's the only portion I'm going to be
23 asking you about.

24 MR. SCHEFFLER: Objection to the testimony
25 of counsel. Objection as beyond the scope of this

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1 deposition.

2 MR. FRANKEL: There's no foundation for
3 using this document.

4 A. I've flipped through the document up to page
5 241.

6 Q. Now the transcript demonstrates that Dr. Green
7 appeared in this broadcast; doesn't it?

8 MR. SCHEFFLER: Objection, beyond the scope
9 of this deposition. Document speaks for itself.
10 Witness has already testified he has no knowledge of
11 this.

12 A. So far as it's accurate for what it's supposed
13 to be, then it seems that Dr. Green was part of this
14 program.

15 Q. And he was identified on the program as a
16 scientist who had for 20 years directed research in
17 the tobacco industry; right?

18 MR. SCHEFFLER: Objection, document speaks
19 for itself. No independent recollection of this
20 witness with respect to this transcript.

21 A. Can you just tell me -- that's on page 238?

22 Q. 237, sir.

23 A. 237?

24 Q. Do you see under the initials --

25 A. Yes.

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1 Q. -- "P.T," and --

2 A. I'm reading that, yeah.

3 Q. -- there he is identified -- strike that.

4 There Dr. Green is identified as an eminent
5 scientist who for 20 years directed research in the
6 tobacco industry.

7 A. That's what it says.

8 MR. SCHEFFLER: Let the record reflect that
9 that's -- that's attributed to P.T, whoever P.T is.

10 Q. And sir, it also says in this document that last
11 September he retired from the board of
12 British-American Tobacco Company; right?

13 A. That's what this says.

14 MR. SCHEFFLER: Again let the record
15 reflect that counsel is reading from comments of P.T,
16 unidentified P.T.

17 A. That's what this text says, yes.

18 Q. And according to the transcript, Dr. Green
19 commented on the issue of smoking and whether smoking
20 caused disease; right?

21 MR. SCHEFFLER: Objection, lack of
22 foundation, document speaks for itself.

23 A. Which particular part are you thinking about
24 there?

25 Q. Well he's quoted as saying, "I believe it will

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1 not be possible to maintain indefinitely the rather
2 hollow 'we are not doctors' stance, and that in due
3 course we will have to come up in public with a
4 rather more positive approach towards cigarette
5 safety. In my view it would be best to be in a
6 position to say in public what we believe in
7 private;" right?

8 MR. SCHEFFLER: Objection. Let the record
9 reflect that the comment that counsel is reading from
10 is -- is attributed to a P.T.

11 MS. WIVELL: Well actually it's not,
12 counsel.

13 MR. SCHEFFLER: Well it's -- that's where
14 my --

15 Are we looking at page 237? I see P.T colon,
16 and then I see the part you read.

17 MR. FRANKEL: And a continuing objection to
18 the use of the document as outside the scope of this
19 deposition.

20 MS. WIVELL: Sir, let me rephrase the
21 question.

22 Q. And there is a quote toward the middle of the
23 page that says, "I believe it will not be possible to
24 maintain indefinitely the rather hollow 'we are not
25 doctors' stance, and that in due course we shall have

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1 to come up in public with a rather more positive
2 approach toward cigarette safety. In my view it
3 would be best to be in a position to say in public
4 what we believe in private." Right?

5 MR. SCHEFFLER: Let the record reflect that
6 counsel is reading from a part of the transcript
7 attributable to P.T.

8 A. There's a --

9 Those words appear in quotes on this page.

10 Q. And then immediately following it the transcript
11 reflects a statement, "Clearly the industry has not
12 accepted the advice which it was given in 1972.
13 Eight years later BAT is still avoiding the issue,
14 saying they can't comment on medical matters because
15 they're not doctors." Right?

16 MR. SCHEFFLER: Objection to the form of
17 the question. And objection to the fact that the
18 document speaks for itself. Objection, it's beyond
19 the scope of this deposition. And objection that
20 this comment is -- is attributed, purportedly, to a
21 P.T, who is unidentified.

22 A. Yes, the words you read appear there.

23 They're -- they're a comment by -- by someone on this
24 program apparently.

25 Q. All right. And right before this Dr. Green had

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1 commented on the industry's view that no evidence had
2 been produced to establish a causal relationship
3 between smoking and any of the diseases with which it
4 had been associated; right?

5 MR. SCHEFFLER: Objection, calls for
6 speculation.

7 A. Can you point that bit out to me, please?

8 Q. Well sir, at the top of the page there is
9 reference to "Alan Long: (Souza Cruz);" right?

10 A. There is.

11 Q. And it says, "The medical evidence, as far as I
12 am aware, is of a statistical nature and it is, as
13 you know, the industry's view that no evidence has
14 been produced to establish a causal relationship
15 between smoking and any of the diseases with which it
16 has been associated." Right?

17 A. Yeah, there's -- those words appear. I'm --

18 I have to voice a concern, I think, because I've
19 given evidence, as we've discussed before, in this
20 case, I have a very genuine concern that all these
21 documents that I've not seen before and which I'm
22 having to answer that I have no knowledge about might
23 actually affect my credibility. I don't want to
24 appear to the jury to be evasive about anything in --
25 in response to your questions, but I really don't

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1 know very much about all these things, and I have a
2 very serious concern about my own credibility on
3 matters which I do have a great deal more knowledge
4 about and which I've given evidence on.

5 Q. Well sir, this was a document which was
6 predesignated for this deposition; wasn't it?

7 MR. SCHEFFLER: Objection.

8 Q. A document that has been used in depositions
9 taken in this case before; right?

10 MR. SCHEFFLER: Objection. That is
11 unfair. You have designated en masse all these
12 deposition exhibits of any witness in this case from
13 BATCO, B&W, RJR, Philip Morris, Tobacco Institute,
14 and a host of things. It is unfair to expect this
15 witness would be required to review all of those
16 documents when the notice of deposition was limited
17 to two specific documents, which have no relevance to
18 this transcript whatsoever.

19 MS. WIVELL: Well counsel, the notice of
20 deposition was not limited to two documents.

21 MR. SCHEFFLER: It certainly was, counsel.

22 MS. WIVELL: Perhaps if you had read it
23 completely and had looked at the predesignation and
24 had looked at the documents in the context of what
25 was happening at the company at the time, you would

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1 have realized that. But failing that, I think we
2 should move on.

3 MR. SCHEFFLER: I move to strike counsel's
4 comments. My objection stands. Furthermore, I would
5 state for the record that this document was -- was
6 purportedly a transcript of a person who is no longer
7 at BATCO, has nothing to do with the documents
8 relating to this deposition notice, the appreciation
9 document of May 1980 nor the change-of-stance
10 document of June 1980. It was not on Exhibit A,
11 which was the predesignation documents which came
12 from the file of those two, nor does it have anything
13 to do with either of those documents. And it is
14 totally unreasonable to expect that the witness would
15 be prepared on such an exhibit.

16 Q. Sir, at the top of the page there is a reference
17 to Alan Long from Souza Cruz; right?

18 A. It says that, yes.

19 Q. Souza Cruz is the Brazilian tobacco subsidiary
20 member of the BAT Group; isn't it?

21 MR. SCHEFFLER: Objection, beyond the scope
22 of this deposition.

23 A. Souza Cruz is an indirect subsidiary of B.A.T
24 Industries.

25 Q. And under Alan Long's name it says, "The medical

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1 evidence, as far as I am aware, is of a statistical
2 nature and it is, as you know, the industry's view
3 that no evidence has been produced to establish a
4 causal relationship between smoking and any of the
5 diseases with which it has been associated." Right?

6 MR. SCHEFFLER: Objection, asked and
7 answered. Objection, beyond the scope of this
8 deposition. Objection, the document speaks for
9 itself.

10 A. Those words appear as you said, yes.

11 Q. And sir, isn't it a fact that before April 14th,
12 1980, it was the BAT Group's position that no
13 evidence had been produced to establish a causal
14 relationship between smoking and any of the diseases
15 with which it had been associated?

16 MR. SCHEFFLER: Objection to the form of
17 the question. Objection, beyond the scope of this
18 deposition. Objection that this was the very subject
19 matter of the deposition of Dr. Proctor which you
20 noticed as a Class A deposition and conducted, and it
21 is not the scope of this deposition, and it's
22 improper to try to incorporate into this deposition
23 those topics which were the subject of a prior
24 deposition.

25 A. I can't answer your question. I've got no

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1 knowledge. And it seems to me unless I read all
2 eight million plus documents that I produced into
3 Guildford, I couldn't answer but a small percentage
4 of the questions you asked me so far. I haven't read
5 those documents or the majority we've discussed so
6 far. I -- I just don't know the truth of the
7 position that you've just identified.

8 Q. Well let me ask you today: Isn't it true that
9 the companies that you're speaking for have taken the
10 position that there is no evidence that has been
11 produced to establish that a causal relationship
12 exists between smoking and any of the diseases with
13 which it has been associated?

14 MR. SCHEFFLER: Same objection. This was
15 covered with Dr. Proctor, this -- who was properly
16 noticed and testified with respect to the positions
17 of BATCO on smoking and health. This is not the
18 subject of this deposition, nor was this witness
19 prepared for this deposition, nor was this witness
20 called to testify about these matters.

21 MS. WIVELL: I truly object to your
22 conduct, counsel.

23 MR. SCHEFFLER: Well I object to the fact
24 that you are misusing the discovery process to
25 attempt to ask the same types of questions of a

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1 witness who was not offered to -- or prepared to
2 address these issues. You did ask these questions of
3 Dr. Proctor. He was prepared and he was produced to
4 answer those issues. You cannot use this discovery
5 process and this custodial type of deposition to ask
6 these questions of this witness, it's improper, and I
7 object to it. And you've done it -- done it all
8 morning.

9 Q. Isn't it true that the companies that you're
10 speaking for here today have as their public position
11 today that there is no evidence that has been
12 produced to establish that a causal relationship
13 exists between smoking and any of the diseases with
14 which it's been associated?

15 MR. SCHEFFLER: Question was asked and
16 answered, and I object to the form of the question.
17 I object on the basis of the prior objections.

18 A. That question's got to be answered either by
19 someone from public affairs or one of our
20 scientists. I'm not qualified to -- to give a
21 position that the company has on those issues.

22 Q. Well Dr. Green in Exhibit 512 is reported as
23 saying, immediately following the -- the comment
24 under Alan Long's name, "I think this is a very naive
25 view and quite simply I believe that just to say

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1 evidence is statistical and can't prove anything is a
2 nonsense;" correct?

3 MR. SCHEFFLER: Let the record reflect that
4 counsel is reading from Exhibit 512, which is a
5 transcript of a Tellex broadcast in which Dr. Green
6 was at that time retired from BATCO.

7 A. I know nothing about the document beyond the
8 words here. I don't know if they're correctly
9 attributed or not.

10 Q. Sir, your counsel just said that Exhibit 512 is
11 a transcript of a Tellex broadcast done at the time
12 Dr. Green was retired from BATCO. Do you adopt what
13 he just said as your testimony?

14 MR. SCHEFFLER: Objection. I'm not giving
15 evidence in this case.

16 A. I have no idea of the timing of the -- I don't
17 see the timing of the broadcast.

18 It appears to be the 14th of -- of April '80, if
19 that's correct. I don't recall what -- whether we've
20 discussed when Dr. Green retired.

21 Q. Well sir, Dr. Green, according to this exhibit,
22 goes on to say, "I believe that experiments can be
23 carried out and have been carried out and I think
24 that in a nutshell what we can show is that smoking
25 is a very serious causal factor as far as the smoking

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1 population is concerned." Is that correct?

2 MR. SCHEFFLER: Objection, improper use of
3 the document. Objection, beyond the scope of this --
4 of the deposition. Objection on the basis of the
5 witness's prior answer.

6 A. Those words that you've just said appear. I
7 know no more than that.

8 Q. Sir, have you seen the tape that BATCO produced
9 of this BBC program?

10 MR. SCHEFFLER: Objection, asked and
11 answered. He's already testified he's never heard
12 this.

13 A. No, I haven't.

14 Q. Were you aware that a tape of this BBC program
15 existed?

16 MR. SCHEFFLER: Objection, asked and
17 answered.

18 A. No, I wasn't.

19 Q. Sir, if we turn to the next page, the transcript
20 reveals that Dr. Green was asked, "Do you believe
21 that cigarette smoking is harmful?" Right?

22 MR. SCHEFFLER: Objection, the document
23 speaks for itself.

24 A. Those words appear, yeah.

25 Q. And he responds, "Well, as I've said, most

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1 smokers can smoke all their lives without any
2 apparent harm, but if you say do I believe that
3 cigarette smoking" -- I'm sorry, strike that.

4 And Dr. Green responds, "Well, as I've said,
5 most smokers can smoke all their lives without any
6 apparent harm, but if you say do I believe that
7 smoking can cause harm I'm quite sure it can and
8 does. In fact, I'm sure it's a major factor in lung
9 cancer in our society." Have I read that correctly?

10 MR. SCHEFFLER: You left out the word
11 "quite" before "sure."

12 A. Those words you've said appear on the text.

13 Q. And he goes on to say, "In fact, I'm sure it's a
14 major factor in lung cancer" -- I'm sorry, strike
15 that.

16 And he goes on to say, "For example, and perhaps
17 I can express it better by saying this, in my opinion
18 if we could get a decrease in the prevalence of
19 smoking we would get a decrease in the prevalence of
20 lung cancer." Right?

21 MR. SCHEFFLER: Objection to the form,
22 misquotes the document. Also objection to the fact
23 that it's beyond the scope. And lack of foundation.

24 A. I'm not going to confirm that Dr. Green said
25 those words. I just don't know. But those words

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1 appear on this piece of paper.

2 Q. Now sir, Dr. Green's appearance on the BBC
3 caused great concern within the companies that you're
4 speaking here today on behalf of; isn't that true?

5 MR. SCHEFFLER: Objection, lack of
6 foundation.

7 A. I've got absolutely no idea.

8 Q. Well sir, isn't it a fact that as a result of
9 the issues that were raised in the exhibits we've
10 seen earlier in this deposition, the BATCO board
11 decided to consider a change in its stance on smoking
12 and health?

13 MR. SCHEFFLER: Objection to the lack of
14 foundation. Assumes facts not in evidence.

15 A. Can you repeat the question, please?

16 Q. Yes.

17 Isn't it a fact that as a result of the issues
18 which were raised in the exhibits we've seen earlier
19 in this deposition, the BATCO board decided to
20 consider a change in its stance on smoking and
21 health?

22 MR. SCHEFFLER: Same objections, and also
23 objection to lack -- to form.

24 A. I don't know.

25 Q. Well sir, in May of 1980, didn't the public

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1 relations part of BATCO prepare a document so that
2 the board could consider a change in its stance on
3 smoking and health?

4 A. In May 1980 public affairs produced a document,
5 if indeed that's the one that you've noticed the
6 deposition, or one of the two. I don't accept the
7 next part of your statement that it was for the board
8 to consider a change.

9 Q. All right. Well sir, you would agree that the
10 document you just referred to was prepared within a
11 month of Dr. Green's appearance on the BBC.

12 MR. SCHEFFLER: Objection, lack of
13 foundation.

14 A. When you put it that way, yes. There's a -- if
15 this is April 1980, then clearly the -- it's about a
16 month since the document was prepared.

17 Q. Sir, showing you what's previously been marked
18 as Plaintiffs' Exhibit 592, this is a document that
19 begins with the Bates number 109881312; right?

20 A. That's right.

21 Q. And it's entitled "CHANGE OF STANCE ON SMOKING
22 AND HEALTH." Right?

23 A. That's the heading.

24 Q. All right. And if you turn to the second page
25 of the document, it says, "The Board has been

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1 considering a change in its stance on Smoking and
2 Health because some of our earlier views have been
3 overtaken by events and are now damaging to our
4 interests. We believe a changed stance will help us
5 take initiatives to improve our trading position."

6 Right?

7 A. That's the words it says, yeah.

8 Q. Isn't it true that one of the events that is
9 referred to on the second page of Exhibit 313 is Dr.
10 Green going on the BBC and saying that he thought
11 smoking was a serious causal factor in disease?

12 A. I don't know.

13 MR. SCHEFFLER: Which page is this?

14 Q. Sir --

15 THE WITNESS: 313.

16 MR. SCHEFFLER: 313?

17 Q. Isn't it true that one of the reasons Exhibit
18 592 was written was because of the event of Dr. Green
19 going on the BBC and saying that he thought smoking
20 can cause harm and that he was sure it can and does?

21 MR. SCHEFFLER: Objection. Lack of
22 foundation.

23 A. I've not -- in my preparation I've not seen any
24 statements to -- to confirm that, no.

25 Q. Well you haven't seen any statements to deny it;

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1 have you?

2 MR. SCHEFFLER: Oh.

3 A. In the papers I've reviewed there were no

4 statements linking the two subjects at all.

5 Q. Well sir, this document, Exhibit 592, was

6 written by Mr. Leach; wasn't it?

7 A. The initials MJL appear at the end. That's the

8 only clue we have as to the author.

9 Q. And you --

10 I think you said you tried to reach Dr. -- or

11 Mr. Leach?

12 A. I did say that, yes.

13 Q. How many times did you try?

14 A. Once I think.

15 Q. Did you phone him up?

16 A. Yes.

17 Q. Did you try more than one time to reach him to

18 find out why he wrote this document?

19 A. I phoned him up once and asked him to call me

20 back, and he never did.

21 Q. Did you write him and ask him why he wrote this

22 document?

23 A. No.

24 MR. SCHEFFLER: Hold on a second.

25 Q. To the best --

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1 MR. SCHEFFLER: Hold on a second, counsel.

2 (Discussion between the witness and
3 his counsel.)

4 MS. WIVELL: I would like the record to
5 reflect that I was interrupted and that counsel for
6 the defense, who's defending this deposition, then
7 leaned over and talked to Mr. Gilbey.

8 MR. SCHEFFLER: Would you like to know what
9 I said? Would you like to know what I said,
10 counsel?

11 MS. WIVELL: Fine. That's fine. Then I
12 can go, I believe, into all of your conversations
13 with Mr. Gilbey because I would believe you would
14 have waived the privilege.

15 MR. SCHEFFLER: No.

16 MS. WIVELL: Would you like to tell me what
17 he said?

18 MR. SCHEFFLER: Yes. Yes. I gave Mr.
19 Gilbey an instruction, and the instruction was that
20 if he had, at his direction, asked one of the counsel
21 to call Mr. Leach and that communication was done at
22 his direction, that that was not a privileged
23 communication and he was free to tell you about it.
24 That was my instruction to him.

25 MS. WIVELL: Sir --

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1 MR. SCHEFFLER: Okay?

2 MS. WIVELL: I'm sorry.

3 Q. Did others try and reach Mr. Leach?

4 A. Yes, they did. Yes.

5 Q. Were they able to?

6 A. They were able to, yes.

7 Q. Why isn't Mr. Leach here talking to us about
8 this document today?

9 MR. FRANKEL: Objection.

10 A. Wasn't deemed necessary for Mr. Leach to be
11 here. I think I'm perfectly able to speak about the
12 documents you've designated.

13 Q. Were you told that Mr. Leach indeed did write
14 this document?

15 A. I was told that the conversation with Mr. Leach
16 was fairly brief, that he was sent copies of the two
17 documents that you designated for the deposition, and
18 he actually had no recollection of the documents.

19 Q. Now Mr. Leach at the time that this document was
20 written in June of 1980 was the public affairs
21 manager of BATCO; wasn't he?

22 A. He was certainly in public affairs, yes.

23 Q. And sir, this document was written so that the
24 board could consider whether the opinions expressed
25 in this paper -- I'm sorry, strike that.

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1 Exhibit 592 was written so that the board could
2 consider whether or not to adopt the new stance
3 that's talked about here; isn't that true?

4 MR. FRANKEL: Object to form. Lack of
5 foundation.

6 MR. SCHEFFLER: It also calls for
7 speculation.

8 A. I -- I can't impute a motive to -- to why the
9 paper was written. Public affairs, I think it's part
10 of -- quite obviously part of their job to put this
11 position paper together for -- for discussion. It --
12 it does refer to the board. That's what it says.

13 Q. But you understand that Exhibit 592 was prepared
14 by the BATCO public affairs department as part of its
15 responsibilities at or around the time the document
16 is dated; right?

17 A. Subject to the fact that I've no information
18 that anyone from public affairs actually recalls the
19 document, it appears that it is written by public
20 affairs around this time, yeah.

21 Q. But you understand that they did it because
22 that's their job; right? Or I'm sorry, strike that.

23 You understand that this document was prepared
24 as part of their job responsibilities.

25 MR. SCHEFFLER: Object to the form.

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1 A. I don't -- I don't --

2 I don't know the motive. I -- when I -- when I
3 referred to their job responsibilities, that was a --
4 a degree of speculation. It just seemed to me that
5 an issue such as this -- such as this was part of the
6 responsibilities of a public affairs department.

7 Q. And it seemed to you --

8 Or that seems to you because of what you have
9 learned in your responsibilities as coordinator for
10 the litigation relating to smoking and health
11 worldwide; right?

12 MR. SCHEFFLER: Objection to the form.

13 A. No, that's not right. It's -- it's part of my
14 experience having been with large companies over the
15 last 20 odd years that that's the role of public
16 affairs.

17 Q. And did Mr. Leach give you any indication that
18 that was not correct with regard to Exhibit 592?

19 MR. SCHEFFLER: Objection.

20 A. The -- the dialogue with Mr. Leach is -- is --
21 was as brief as I reported and stated a few minutes
22 ago. He had no recollection of this document. And I
23 don't think there was any -- any further discussion.

24 Q. Well he didn't deny writing it; did he?

25 A. He didn't confirm or deny because he couldn't

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1 recall.

2 Q. Now sir, if we look at the last paragraph of the
3 document -- or the last page of the document, there
4 is a heading entitled "CONCLUSIONS AND
5 RECOMMENDATIONS." Right?

6 A. There is.

7 Q. And it says, "A new stance on smoking and health
8 appears to offer considerable advantages to B.A.T.
9 and indeed there seems to be a consensus that our
10 position should change." Right?

11 A. That's what it says.

12 Q. And did you learn -- I'm -- strike that.

13 There was a consensus that a change in the
14 public position the companies held with regard to
15 smoking and health should change; right?

16 A. I don't know.

17 Q. Well you have no information that would
18 contradict what's written here.

19 A. Since no one can recall writing this, that has
20 to be the case.

21 Q. Well sir, you would agree that you have no
22 reason to doubt this document's authenticity; do you?

23 MR. SCHEFFLER: Objection to the form.

24 It's vague.

25 A. I can't -- I can't authenticate or not

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1 authenticate the document. It's before me and that's
2 all I know about it.

3 Q. You would agree, however, that records you have
4 reviewed showed that the BATCO board did address a
5 proposal about a new public position on smoking and
6 health later in the year. Isn't that true?

7 A. I've seen a board minute later in the year
8 which, among other matters, did discuss what I would
9 term a position paper, again using very broad
10 language, on smoking and health. I've seen that,
11 yes.

12 Q. Sir, if we turn to Exhibit 742, that is the
13 extract from the minute of the BATCO management board
14 that you were just referring to; isn't it?

15 MR. SCHEFFLER: Give us a minute to get it
16 out.

17 THE WITNESS: I don't have 742: It might
18 there. It might be in that stack.

19 MR. SCHEFFLER: It should be either the
20 second or third document.

21 A. I've got 742, and that is the -- the -- the
22 minute that I was thinking of.

23 Q. All right. For the record, Exhibit 742 is Bates
24 numbered 202029143; right?

25 A. Correct.

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1 Q. And you mentioned that it refers to a position
2 paper; right?

3 A. I can't remember what specific language I used.
4 I may have said position paper. I certainly meant
5 a -- a note for a presentation that was given to the
6 board.

7 Q. And sir, isn't this note -- I'm sorry, strike
8 that.

9 MS. WIVELL: I would like to take a break.

10 MR. SCHEFFLER: All right.

11 THE REPORTER: Off the record, please.

12 (Discussion off the record.)

13 (Luncheon recess taken at 12:12 o'clock
14 p.m.)

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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:20 o'clock
3 p.m.)

4 BY MS. WIVELL:

5 Q. Sir, turning your attention back to Exhibit 742,
6 the extract from the minutes of the BATCO management
7 board meeting held on December 18th, 1980, you would
8 agree that it's required that companies keep board
9 minutes; wouldn't you?

10 MR. SCHEFFLER: Objection, overbroad.

11 A. I believe that's the case, yes.

12 Q. And sir, this Exhibit 742 is a record that was
13 made of the meeting of the BATCO management board
14 that was held on December 18th, 1980; isn't it?

15 A. That certainly is what it appears to be, yes.

16 Q. All right. Well sir, you have no reason to
17 believe it's not; do you?

18 A. No, no. Certainly not.

19 Q. And in preparation for your deposition you
20 reviewed the files from which this came; right?

21 A. I didn't review all the files from which this
22 came, I -- I only made inquiry. I -- I was shown
23 this minute.

24 Q. All right. And when you made inquiry --
25 inquiry, were you led to believe that this was a

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1 minute of the BATCO board?

2 A. Yes, indeed.

3 Q. All right. Sir, if we take a look at the first
4 paragraph, it says, "Largely because of U.S. legal
5 constraints, the industry has not so far found a
6 satisfactory way of communicating product changes to
7 consumers, doctors, authorities, media and
8 employees;" right?

9 A. That's what it says, yes.

10 Q. And it goes on to say, "This lack of response
11 can be taken by some to imply guilt;" right?

12 A. Says that.

13 Q. And it says that "The industry must find a way
14 of overcoming this constraint if it is to attain
15 credibility." Right?

16 A. It says that.

17 Q. And it reflects that a note had been proposed
18 concerning a future BATCO stance on these issues;
19 right?

20 A. It does say that, yeah.

21 Q. All right. And the note you take to mean that
22 there had been a paper written on this issue; right?

23 A. Yes.

24 Q. And sir, the first -- I'm sorry, strike that.

25 There are three issues that the proposed future

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1 stance was based on; right?

2 A. There's three paragraphs there, yes.

3 Q. Okay. And the first --

4 These paragraphs, by the way, are issues that
5 the future BATCO stance might be based on; right?

6 MR. FRANKEL: Object to form.

7 A. Yeah, the -- the note itself says, "The note
8 proposed that the future BATCo stance be based on:"

9 Q. And then it lists three things.

10 A. It does.

11 Q. The first is "Industry acknowledge (but does not
12 accept) the strong body of opinion that smoking is
13 associated with risk." Right?

14 A. It says that.

15 Q. All right. Now if you turn to the exhibit that
16 we were looking at earlier, Exhibit 592 entitled
17 "CHANGE OF STANCE ON SMOKING AND HEALTH," and turn
18 to the second page of the document, there is a
19 suggested new stance that -- with an answer that
20 says, "We recognise that there is a growing body of
21 responsible medical/scientific opinion which believes
22 that smoking (either on its own or in combination
23 with other environmental or genetic factors) can
24 cause or contribute to a variety of diseases in a
25 minority of smokers;" right?

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1 MR. SCHEFFLER: It -- it says "various"
2 rather than "variety."

3 Q. I'm sorry, "...to -- to various diseases in a
4 minority of smokers;" right?

5 A. That's what it says.

6 Q. Now sir --

7 MR. SCHEFFLER: And for completeness sake
8 I'd can request that the next two sentences be read
9 into the record at this time.

10 Q. That language essentially -- I'm sorry, strike
11 that.

12 The point number one in Exhibit 742 reflects
13 what is written under a suggested new stance on
14 page -- the second page of Exhibit 592; doesn't it?

15 MR. SCHEFFLER: Objection to -- objection
16 to the form. Objection that the question is vague.

17 A. No, it -- it doesn't really. From reading
18 the -- the file that I referred to much earlier on,
19 it's quite clear that there's an ongoing discussion
20 and -- and refinement of -- of positions for -- as --
21 as part of a continuing discussion. And in fact,
22 what appears in this particular Exhibit 592 was --
23 was later refined to become the three points or --
24 we're talking about point number one, to become one
25 of the three points that later went before the board.

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1 Q. All right. Just so we're clear then, Exhibit
2 592 was an earlier version of the note that is
3 referred to in the second paragraph of Exhibit 742.

4 MR. SCHEFFLER: Objection, mischaracterizes
5 the testimony.

6 A. I -- I wouldn't say that in -- in those terms.
7 What -- what appears to be going on in -- in this
8 time was a -- an internal debate/discussion amongst
9 those people that I think I would certainly expect to
10 be involved in such a debate about positioning, and
11 ultimately towards the end of the year a position was
12 put before the board that was the product of -- of
13 that earlier debate.

14 MS. WIVELL: We have to go off the record.

15 (Discussion off the record.)

16 BY MS. WIVELL:

17 Q. Sir, would you then agree that Exhibit 592 is a
18 version of the note that originally -- that
19 eventually went to the board in -- as reflected in
20 Exhibit 742?

21 MR. SCHEFFLER: Objection, asked and
22 answered. Mischaracterizes the testimony.

23 A. Could --

24 Could you read me back my last answer? Because
25 I think I will probably stick with that one. If I

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1 could just have it read back to me.

2 Q. You said, sir --

3 Well let me rephrase the question. Okay? Am I
4 correct, then, in understanding, sir, that Exhibit
5 592 was a document which was written as part of that
6 debate which eventually culminated in the note that's
7 referred to in the second paragraph of Exhibit 742
8 being sent to the BATCO board?

9 A. I think it's fair. That's fair. That is, it
10 was part of an ongoing debate during that period.

11 Q. Now sir, let me show you what's been marked
12 previously as Plaintiffs' Exhibit 502. This is a
13 document entitled "APPRECIATION," which begins with
14 the Bates number 109881322; right?

15 A. Yes.

16 Q. And sir, this document is another document which
17 was written as part of that ongoing debate which
18 culminated in the board's discussion in December of
19 1980; right?

20 A. It's part of that period and debate, yes.

21 Q. And this document was prepared by the BATCO
22 public affairs department as part of that ongoing
23 discussion; right?

24 A. So far as is apparent from the document, that --
25 that seems to be the case.

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1 Q. And in fact BATCO has researched, through the
2 person responsible for the personnel records of
3 BATCO, to determine who each of the individuals whose
4 names or initials appear on this document, who they
5 work for; right?

6 A. We gave information in the Florida
7 interrogatories that we looked at earlier about four
8 or five people whose names appear on these -- these
9 papers, yes.

10 Q. All right. And by "these papers," you mean
11 Exhibit 502.

12 A. I do.

13 MR. SCHEFFLER: There was a previous --

14 This document, which is now 502, was previously
15 marked in these depositions; is that correct?

16 MS. WIVELL: Yes, sir.

17 MR. SCHEFFLER: Okay. Is there -- is there
18 a reason why we're marking it again?

19 MS. WIVELL: We didn't mark it again.

20 MR. SCHEFFLER: Okay.

21 MS. WIVELL: It was marked as Exhibit 502.

22 MR. SCHEFFLER: And that was the mark it
23 was given at the Proctor deposition?

24 MS. WIVELL: I can't tell you if it was the
25 Proctor deposition or the Broughton deposition, --

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1 MR. SCHEFFLER: Okay.

2 MS. WIVELL: -- to be honest with you, but
3 one of the two of them. I just can't remember.

4 MR. SCHEFFLER: It's the same number.

5 MS. WIVELL: Same number.

6 MR. SCHEFFLER: Okay.

7 MS. WIVELL: I mean we can have the court
8 reporter get the copy out.

9 MR. SCHEFFLER: No, I take your
10 representation it's so. That's fine.

11 BY MS. WIVELL:

12 Q. Sir, would you get out Exhibit 746. Exhibit 746
13 are the interrogatory answers supplied by BATCO in
14 the Florida litigation concerning the document which
15 we've marked as Exhibit 502.

16 A. That's right.

17 Q. Sir, if we turn to the end of the document --
18 I'm sorry. If we turn to -- yes -- the end of the
19 document, it says there that "BATCo consulted with
20 Fiona Goodsell of the BATCo Human Resources
21 Department strictly for the purposes of obtaining a
22 portion of the employment history data provided in
23 response to" parts of this interrogatory; right?

24 A. That's right.

25 Q. All right. And in fact BATCO did consult Ms.

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1 Goodsell in order to try and determine whether the
2 people whose names or initials appear in Exhibit 502
3 were employed by the public affairs department at or
4 about the time the document was written; right?

5 A. Yes. And I -- can I just add that you've caught
6 me on this because I actually spoke to Fiona Goodsell
7 myself to check that the information in here was --
8 was correct, so that should be added to the list of
9 people I spoke to in the deposition.

10 Q. Okay. Just so we're clear, you have talked to
11 Ms. Goodsell to determine whether the information on
12 the employment history of people who are listed in
13 Exhibit 4 -- 746 is accurate.

14 A. That's right.

15 Q. Now --

16 MR. SCHEFFLER: Just for the record, the
17 information was supplemented and you have a copy of
18 the supplementation, too.

19 MS. WIVELL: I don't have a copy of it.

20 MR. SCHEFFLER: Well it just gave -- it
21 just gives further addresses. I think we supplied
22 this to you.

23 MS. WIVELL: Bruce, Exhibit 746 is what you
24 sent me.

25 MR. SCHEFFLER: Okay.

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1 MS. WIVELL: Nothing more.

2 MR. SCHEFFLER: All right.

3 BY MS. WIVELL:

4 Q. Now sir, the appreciation document, Exhibit 502,
5 was circulated as part of the ongoing discussion on
6 smoking-and-health-related issues that we've been
7 referring to in this deposition; wasn't it?

8 A. It appears to have been circulated or -- to --
9 to a few people. I -- I can say no more than, you
10 know, obviously the names that appear on its face.

11 MR. SCHEFFLER: Let me interpose an
12 objection to that prior question as to form.

13 Q. If you turn to the second page of the Exhibit
14 502, at point m) it refers to -- or it says, "The
15 company's position on causation is simply not
16 believed by the overwhelming majority of independent
17 observers, scientists and doctors." Right?

18 A. That's what the words say, yes.

19 Q. And if we turn back to Exhibit 314, we find a
20 substantially similar sentiment expressed in that
21 document; don't we?

22 MR. SCHEFFLER: I object to the form of the
23 question.

24 A. Can you help me out by pointing out where we
25 should be looking?

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1 Q. Yes, sir. In the first paragraph of the
2 exhibit.

3 A. Well the two -- the --

4 The words are definitely not the same between
5 paragraph m) and the first paragraph of 314.

6 Q. Understanding that the words are not exactly the
7 same, my question was a little different, sir. In
8 the first paragraph of the document entitled
9 "CIGARETTE SMOKING - CAUSAL RELATIONSHIPS," isn't
10 the sentiment that's expressed in those few first --
11 first few sentences substantially the same as that
12 expressed in point m) on the "APPRECIATON" document?

13 MR. SCHEFFLER: I note my objection for the
14 record that -- that the question is vague, and also
15 my objection that the documents speak for themselves.

16 A. I don't think I can comment on -- on sentiment.
17 I mean I just certainly --

18 I'm more familiar with one document than the
19 other. I -- I'd have to go back to what the
20 documents themselves say, and -- and I'm not going to
21 compare anything beyond the words. I'm not going to
22 be drawn into that.

23 Q. Well sir, the first paragraph of -- of Exhibit
24 314 begins by saying, "In their public relations the
25 tobacco companies are particularly sensitive to the

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1 question of 'causality.' To the medical profession
2 and others this attitude is hardly comprehensible.
3 Most doctors and even medical scientists rarely give
4 much thought to what they mean by cause.'" Right?

5 MR. SCHEFFLER: Let the record reflect that
6 "causality" and "cause" are in quotations.

7 A. Those words are on that exhibit, yes.

8 Q. And it goes on to say, "Tobacco companies'
9 spokesmen find themselves sticking out against what
10 to others appears common sense;" right?

11 A. That's what it says.

12 Q. All right. And in fact point m) in
13 the "APPRECIATION" document says, "The company's
14 position on causation is simply not believed by the
15 overwhelming majority of independent observers,
16 scientists and doctors;" right?

17 A. That's what it says.

18 Q. All right. Now sir, would you turn to the page
19 that ends with Bates number 326.

20 MR. SCHEFFLER: That's the fifth page?
21 Fifth page of the document.

22 Q. There toward the bottom in the
23 second-to-the-last paragraph, do you see the phrase
24 "The notion of a, quote, safer, quote, cigarette
25 will greatly assist us in tapping the projected

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1 population growth of less developed countries by the
2 year 2000?"

3 A. I see those words.

4 Q. It goes on to say, "We could confidently
5 predict, in the year 2000, very large numbers of
6 people in the developing countries smoking, quote,
7 safe, quote, cigarettes largely in moderation, and
8 the anti-smokers being isolated by a prevailing mood
9 of common-sense." Right?

10 A. I see those words, yeah.

11 Q. Now sir, we've seen that sentiment before in the
12 documents that we've looked at in today's deposition;
13 haven't we?

14 MR. SCHEFFLER: Objection, vague,
15 ambiguous, lack of foundation.

16 A. If you can show me, I'll have a look.

17 Q. Could you turn to the document concerning the
18 conference in Sydney.

19 MR. SCHEFFLER: Is that an exhibit?

20 THE WITNESS: 301.

21 MS. WIVELL: Yes.

22 Q. Sir, you have Exhibit 301 in front of you?

23 A. I do, yes.

24 Q. And we had looked earlier in the deposition at
25 the page that ends with the Bates number 837.

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1 MR. SCHEFFLER: Objection.

2 Q. Do you recall that, sir?

3 A. I recall seeing this, yes, and looking at
4 various parts of this.

5 Q. And there at point 46 it says, "Cigarettes of
6 substantially reduced biological activity (SRBA) can
7 be made by product modification and will continue to
8 present a range of marketing opportunities. By SRBA
9 is meant cigarettes where epidemiology would show no
10 greater incidence of disease for smokers than
11 non-smokers."

12 A. I remember you reading that before. Yes.

13 Q. All right. And sir, what they're talking about
14 is a safer cigarette; right?

15 MR. SCHEFFLER: Objection, document speaks
16 for itself. No foundation. Beyond the scope of this
17 deposition.

18 A. I'm certainly not qualified to get into safer
19 cigarettes. I'll have to stick with the words as we
20 see on the paper.

21 Q. Would Dr. Blackman be more qualified, in your
22 opinion, to have a good foundation for a comment
23 about whether a safer cigarette was possible?

24 MR. SCHEFFLER: Objection to form.

25 A. It's speculation, but as head of research, I

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1 suspect he would be more -- certainly more qualified
2 than I am, yes.

3 Q. Sir, one of the documents that you reviewed in
4 your deposition preparation and brought in here to
5 the deposition today was Exhibit 743; right?

6 A. I can't recall. Which one's that?

7 Q. The draft of the CAC conference in Vancouver.
8 Do you have that, sir?

9 A. I'm sure that it's somewhere.

10 Got it.

11 Q. Now this document was prepared by Dr. Blackman;
12 wasn't it?

13 A. So far as we know from the face, it says
14 Blackman.

15 Q. And you found it in his files; didn't you?

16 A. I didn't find it anywhere. This is one of these
17 documents that was presented to me for part of the
18 preparation. I -- I don't know which file it came
19 from.

20 Q. You have no reason to believe Dr. Blackman
21 didn't write it, though; do you?

22 A. I can't comment on anything other than what I
23 see on the face of the document.

24 Q. This is entitled "DRAFT FOR CAC CONFERENCE,
25 VANCOUVER;" right?

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1 A. That's what it says.

2 Q. The first subject of the document is a safe
3 cigarette.

4 A. "Is a safe cigarette on the way?"

5 Q. Yes, sir.

6 MR. SCHEFFLER: With a question mark after
7 it, let the record reflect.

8 Q. Well sir, the first heading is "Is the safe
9 cigarette on the way?" Right?

10 A. Indeed.

11 Q. And Dr. Blackman goes on to answer that
12 question; doesn't he?

13 MR. SCHEFFLER: Objection, the document
14 speaks for itself. Lack of foundation.

15 A. Dr. Blackman writes three paragraphs under that
16 heading of "Is a safe cigarette on the way?" Whether
17 it's an answer to the question, I don't know.

18 Q. Well he begins the first of those three
19 paragraphs by saying, quote, "There is no doubt that
20 the, quote, safer, quote, cigarette is here now - and
21 that the degree of smoking-associated risk can
22 continue to reduce in line with changes in cigarette
23 construction down to a level statistically
24 indistinguishable from the background level of the
25 non-smoker...." Right?

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1 MR. SCHEFFLER: Wait. Objection. Let the
2 record reflect that the word "safer" is in
3 quotations, and that at the end of the sentence there
4 is the additional parens, "CF Gori," close parens.

5 A. Subject to those additions, yes, that's what the
6 paragraph says.

7 Q. Now the next heading that Dr. Blackman addresses
8 in the document concerning the credibility of the
9 industry stance is -- I'm sorry. Strike that.

10 The next heading that Dr. Blackman addresses is
11 the credibility of the industry stance; right?

12 A. That's the next heading on this paper, yes.

13 Q. And according to this document, he thought that
14 was really for the public affairs department to
15 comment on; right?

16 A. That's what the sentence says here, yes.

17 Q. Now if we turn to the second page at the bottom
18 there is the heading "Restrictions on Advertising in
19 the Third World."

20 A. I see that.

21 Q. And he thought that, too, was basically for
22 public affairs to comment on.

23 A. That's what it says.

24 Q. And if we turn to the last page, there is the
25 heading "What are the motives of the Anti-Smoking

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1 Lobby?" Right?

2 A. Yes.

3 Q. And he thought that also was something for
4 public affairs to comment on.

5 A. The author says that, yes.

6 Q. This document is dated -- I'm sorry, strike
7 that. Exhibit 4 --

8 MR. SCHEFFLER: 743.

9 Q. Strike that.

10 Exhibit 743 is dated May 19th, 1980; isn't it?

11 A. Yes, it is.

12 Q. If we go back to the "APPRECIATION" document,
13 Exhibit 502, what is the date of that document?

14 A. Appears to be the 16th of May 1980.

15 Q. In other words, three days before Exhibit 743
16 was written.

17 A. Apparently, yes.

18 Q. Now turning back to the "APPRECIATION" document,
19 that document sets forth possible new approaches for
20 the BAT Group to take publicly with regard to smoking
21 and health; doesn't it?

22 MR. SCHEFFLER: Objection to the form,
23 overbroad.

24 A. I don't necessarily disagree with your
25 characterization. I mean it seems to me it's what I

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1 would call a blue sky document; someone is just
2 putting together a collection of thoughts as to
3 possibilities.

4 Q. Well sir, doesn't the document itself refer to
5 it as a number of possible approaches which could be
6 used in the subject of smoking and health publicly?

7 A. Yeah. I'm not disagreeing with -- with your
8 earlier description. It is -- it is a think
9 document, it's a number of ideas that are being set
10 out in the document.

11 Q. All right. If we turn to the page that ends
12 with Bates number 328, at the top it says, "We have
13 developed a number of possible approaches to this and
14 they may be found as Appendices A1, A2 and A3;"
15 right?

16 A. That's what it says.

17 Q. Now there are appendices A1, A2 and A3 which are
18 attached to Exhibit 502; right?

19 A. I've got those, yes.

20 Q. And you understand that the Appendix A1 was
21 prepared by the public affairs department of BATCO in
22 order to address the potential -- I'm sorry, strike
23 that.

24 You understand that Appendix A1 was prepared by
25 the public affairs department of BATCO in order to

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1 suggest a new answer to the question "Do you believe
2 smoking is harmful to health?" Right?

3 MR. SCHEFFLER: Objection, compound
4 question or assumes facts in evidence. Objection,
5 calls for speculation.

6 A. I said earlier that I've got no information
7 about this or indeed several other documents that we
8 discussed above and beyond what -- what appears on
9 their face. I believe, I think from the
10 interrogatories, that Kidd and others named in here
11 were public affairs people, and that appendix seems
12 to be part of the appreciation documents about
13 possible positions.

14 Q. Sir, why don't we take a look at Exhibit 746
15 just to make sure about what information BATCO has
16 about the position of the -- the people who are
17 listed at the top of the page. Would you turn to the
18 ninth page of the exhibit -- of Exhibit 746.

19 A. Okay.

20 Q. All right. There it says, "The document
21 purportedly denominated as "Appendix A1" and
22 entitled, "New Stance on Smoking and Health," was
23 apparently offered by T. W. Kidd. The addressees of
24 the document are Robert L. O. Ely, Michael J. Leach,
25 Edward Oxberry and Jerome J. J. Mostyn." Have I read

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1 that correctly?

2 A. I'm not quite with you. I've got the wrong page
3 I think. My page numberings are probably different
4 to yours.

5 Q. All right. I'm looking at the page that at the
6 top in the right-hand corner says 10/14.

7 A. Yeah.

8 Q. Do you have it, sir?

9 A. Yes. The middle paragraph?

10 Q. Yes. Well no, actually --

11 A. Oh, no. I see.

12 Q. Let me begin again.

13 In Exhibit 746 on the ninth pages it says, "The
14 document purportedly denominated as "Appendix A1" and
15 entitled, "New Stance on Smoking and Health," was
16 apparently authored by T. W. Kidd. The addressees of
17 the document are Robert L. O. Ely, Michael J. Leach,
18 Edward Oxberry and Jerome J. J. Mostyn." Right?

19 A. Yeah. Yeah.

20 Q. And you understand that information is correct.

21 A. I do.

22 Q. Now at the time that Appendix 1A was written,
23 Kidd was employed by BATCO as assistant to the BATCO
24 public affairs manager; right?

25 MR. SCHEFFLER: Objection to the form.

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1 A. Taking the information here in that -- in May
2 1980, that looks like where he would be, yes.

3 Q. Well that's the information that's given on page
4 nine of Exhibit 746, the answers to interrogatories
5 which BATCO filed in Florida.

6 A. Indeed. I'm just picking it out of the mass of
7 other information that's there, yes.

8 Q. All right. And if we turn to the next page we
9 see that at the time this Exhibit 502 was written Ely
10 was head of public affairs for BATCO.

11 A. Apparently, yes.

12 Q. You have no reason to believe that the
13 information contained in Exhibit 746 is wrong.

14 MR. SCHEFFLER: Objection, asked and
15 answered.

16 A. No, I confirm it's correct.

17 Q. And sir, if we look further down the page of
18 Exhibit 746, there is information concerning Mr.
19 Leach.

20 A. That's right.

21 Q. What was Mr. Leach's position at the time this
22 document was written?

23 A. Leach served in the -- would be --

24 He was in the BATCO department of public
25 affairs.

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1 Q. And at this time -- all right. Strike that.

2 And if we look a little further down, there is

3 information about Mr. Oxberry; isn't there, sir?

4 A. Yes, there is.

5 Q. And at the time this document was written, what

6 was Mr. Oxberry's position?

7 A. Just says he served in BATCO's head office.

8 Q. At one point in time he served as manager of

9 BATCO's department of public affairs; didn't he?

10 A. Oh, yes. So it says, yes.

11 Q. Now there's also information on the tenth page

12 of Exhibit 746 concerning Mr. Mostyn.

13 A. Yes.

14 Q. And Mr. Mostyn at the time this document was

15 written held what position, sir?

16 A. He was in the department of public affairs.

17 Q. Let's turn to the next appendix. This one is

18 entitled "POSSIBLE POSITIONS ON SMOKING AND HEALTH.

19 QUESTION" -- what -- I'm sorry -- "QUESTION: DOES

20 BAT THINK THAT SMOKING CAUSES DISEASES SUCH AS

21 CANCER?" Right?

22 A. That's what it says, yes.

23 Q. And it proposes an answer: "Yes, we think that

24 some people can contract disease through cigarette

25 smoking especially if they smoke excessively. But

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1 you have to remember that the vast majority of people
2 continue to enjoy smoking in moderation and do not
3 contract -- contract disease at all;" right?

4 A. You missed out the word "smoking tobacco," but
5 apart from that, yes, the paragraph is correct.

6 Q. All right. Let me rephrase the question.

7 And there it says, "Yes, we think that some
8 people can contract disease through cigarette smoking
9 especially if they smoke excessively. But you have
10 to remember that the vast majority of people continue
11 to enjoy smoking tobacco in moderation and do not
12 contract disease at all." Right?

13 A. That's what it says.

14 Q. Now sir, who wrote appendix two?

15 A. Well the -- the only clue we've got is the
16 initials at the -- the bottom of the second page,
17 which is MJL, who I take to be Leach.

18 Q. Now sir, let's turn to the appendix three. This
19 is another proposed position on the issue of smoking
20 and health; right?

21 MR. FRANKEL: Object to form.

22 A. Well again I think your characterization --

23 I'll stick with what it says in the heading, "A
24 New Company Approach to the Smoking and Health
25 Issue."

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1 Q. And this is another of the appendixes which is
2 referred to earlier in the document; right?

3 A. So it seems.

4 Q. All right. And who wrote appendix three?

5 A. I don't think we know that. There's no clues on
6 that. And as I said earlier, we can't find anyone
7 who actually remembered these documents.

8 Q. Now under the first heading of "Causation" it
9 says, "We now accept that the smoking of tobacco
10 products, combined with other factors such as genetic
11 pre-disposition, air pollution and psychological
12 temperament is dangerous to the health of a small
13 minority of smokers and can be a cause of lung
14 cancer, emphysema and other respiratory and coronary
15 diseases, many of which are fatal;" right?

16 A. That's what it says.

17 Q. And the third heading under the document's title
18 is -- is entitled "Addiction/Habituation;" right?

19 A. Right.

20 Q. And it says, "This is another aspect of the
21 smoking and health issue which cannot be overlooked;"
22 right?

23 A. That's what it says.

24 Q. And it goes on to say, "Unlike dangerous sports
25 and other high risk activities (except the drinking

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1 of alcohol) smoking is addictive/habitulative in
2 addition to being an additional risk and many smokers
3 would like to give up the habit if they could."

4 Right?

5 A. That's what it says so far, yeah.

6 Q. It goes on to say, "This does not mean that we
7 must contribute to health education or to, quote,
8 quitting clinics, quote, but it does mean that we
9 have to act even more responsibly than if the
10 consumption of our products were purely involving a
11 minority of smokers in an additional risk," right?

12 MR. SCHEFFLER: It says "consumers," not
13 "smokers."

14 Q. I'm sorry, "consumers in an additional risk."

15 A. That's right.

16 Q. All right. Sir, your companies for whom you're
17 speaking today have attempted to determine precisely
18 who wrote the individual portions of this document,
19 Exhibit 502; right?

20 A. We --

21 Well we tried to ascertain any more information
22 we could, yeah.

23 Q. But you did not ask, sir, Dr. Blackman what if
24 any involvement he had in preparing these documents.

25 A. I think I've said that earlier. No, we didn't.

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1 Q. Just so the record's clear, Dr. Blackman is
2 still alive.

3 A. Yes.

4 Q. And he lives within the area of London.

5 MR. SCHEFFLER: This has all been asked and
6 answered.

7 A. I think he lives in the Home Counties, and I
8 think he's also been noticed for deposition by
9 Minnesota plaintiffs.

10 Q. Now sir, what do you mean by the Home Counties?

11 A. Oh, the Home Counties, it's the counties
12 actually surrounding Greater London.

13 Q. All right. Was he sent a copy of this document
14 in order to ask him about it before you came here to
15 your deposition today?

16 A. Not to my knowledge, no.

17 Q. Now did anyone else try and reach Dr. Blackman
18 to find out what role he had in preparing this
19 document?

20 MR. SCHEFFLER: Objection, assumes he had
21 any role.

22 A. Well no. As I say, I mean I -- I -- I looked
23 through the -- the documents and -- and the other
24 papers I've mentioned. I thought to my mind the
25 story was clear enough for me to speak to you about

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1 it today and I didn't think it was necessary to call
2 upon Dr. Blackman; as I said earlier, of course,
3 knowing that he's noticed to speak with you at some
4 time in the future.

5 Q. Now sir, up at the top of the page appear three
6 sets of initials including Dr. Blackman's; right?

7 A. Yes, that's right.

8 Q. And the folks at BATCO tried to figure out to
9 whom those initials belonged.

10 A. That's correct.

11 Q. And those initials follow the words "COPY NO.;"
12 don't they?

13 A. They do.

14 Q. Which suggests that the people whose initials
15 are listed there received copies of the document.

16 A. Fair assumption.

17 Q. Especially since it's standard practice to
18 number copies and indicate on distribution lists at
19 BATCO who got what numbered copy.

20 MR. SCHEFFLER: Objection to --

21 Q. Right?

22 MR. SCHEFFLER: Objection to the form.

23 A. It is a practice. I wouldn't say it's a
24 standard practice.

25 Q. But it is a practice which is followed at BATCO;

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1 isn't it?

2 A. In some cases, yes.

3 Q. The first initials that are there are difficult

4 to read; aren't they, sir?

5 A. Very difficult on my copy, yes.

6 Q. All right. On my copy too.

7 Have you checked the original to see if the

8 initials are CHSL?

9 A. I haven't checked the original. I -- I have

10 seen a -- a better copy where the initials are -- are

11 far clearer.

12 Q. And if we turn to the seventh page of Exhibit

13 746, BATCO gives some information about those

14 initials; right?

15 A. That's right. Yeah.

16 Q. And it is believed that the initials refer to C.

17 H. Stewart-Lockhart.

18 A. That's what we think, yes.

19 Q. And C. H. Stewart-Lockhart was a BATCO board

20 member; wasn't he?

21 A. At one time, yes.

22 Q. He also was a B.A.T Industries board member;

23 wasn't he?

24 A. I'm not sure. I think I --

25 I think that may be the case.

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1 Q. Sir, if that information was given to the court
2 in this case, you would expect it to be correct;
3 wouldn't you?

4 MR. SCHEFFLER: Objection. Objection to
5 the form. Calls for speculation.

6 A. It depends who it was given by.

7 Q. Well if BATCO gave that information to the judge
8 in this case, you'd expect it to be accurate;
9 wouldn't you?

10 A. Absolutely.

11 MR. SCHEFFLER: Object -- objection to the
12 form nevertheless.

13 Q. Now at the --

14 What was Stewart-Lockhart's position at the time
15 the "APPRECIATION" document was written?

16 A. It appears that he was the BATCO managing
17 director.

18 Q. Now we've gone over what Dr. Blackman's position
19 was at the -- at the time this document was written;
20 haven't we, sir?

21 A. Yes, indeed.

22 Q. All right. And at that time he was -- was
23 working in the research and development department at
24 BATCO; right?

25 A. He was with B.A.T. Services Limited in Millbank.

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- 1 Q. Thank you.
- 2 He became a member of the BATCO board of
- 3 directors in November of 1980.
- 4 A. That's what it says.
- 5 Q. And that's correct; isn't it?
- 6 A. Yes, it is.
- 7 Q. Now the last set of initials referred to H. A.
- 8 Morini; right?
- 9 A. (Nodding.)
- 10 Q. Morini was employed by BATCO or an affiliate
- 11 from 1967 to 1984.
- 12 A. Yes, he was.
- 13 Q. And during part of that period he was head of
- 14 BATCO's legal department.
- 15 A. Yes, indeed.
- 16 Q. He's a lawyer.
- 17 A. He's a lawyer.
- 18 Q. Just so we're clear here, sir, Exhibit 502 is a
- 19 document that was sent to the board of directors of
- 20 BATCO; wasn't it?
- 21 MR. SCHEFFLER: Objection, lack of
- 22 foundation.
- 23 A. I don't think that's the case, no.
- 24 Q. What do you understand was done with this
- 25 document?

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1 A. This -- from --

2 From my reading of -- of the file from which
3 this document comes, this was an important -- it's
4 almost the genesis of -- of the debate we've spoken
5 about earlier. This was, as we said, May 1980. This
6 was started off by public affairs. Blackman
7 certainly had his views about -- about the document
8 and certainly had an input into refining that
9 document. And as we've discussed, the final product
10 that went to the board at the end of the year was,
11 I -- I'd suggest, very different to this appreciation
12 document.

13 Q. But you understand that this document was
14 written in order to try and bring before the BATCO
15 board a possible new position on the issue of smoking
16 and health.

17 MR. SCHEFFLER: Objection, calls for
18 speculation.

19 A. I -- I don't know --

20 Clearly I don't know the motives of the people
21 who wrote it. I can only go by, as I've just
22 answered, the feeling that I get from reading the
23 totality of the file. Public affairs, again as we've
24 discussed earlier, it seems entirely appropriate to
25 me that public affairs should be regularly reviewing

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1 the companies' positions in a whole range of areas,
2 including what you've referred to on occasions as --
3 as just generally the smoking-and-health area. That
4 is part of that -- of that job, that's part of that
5 work product. And this particular memo was then
6 taken on board by others who had an input to it and
7 it evolved. And the board considered a product much
8 later in the year.

9 Q. Sir, among the people who considered this
10 exhibit, Exhibit 502, the "APPRECIATION" document,
11 were lawyers; weren't there?

12 A. Apparently, because Morini's name appears on the
13 top.

14 Q. Well sir, earlier today you told me that part of
15 the file you reviewed contained documents for which
16 privilege had been claimed; right?

17 A. That's right, yes.

18 MR. SCHEFFLER: Objection, I don't --

19 I believe that was a mischaracterization of the
20 earlier testimony. The -- the file that he reviewed
21 did not have privileged documents in it.

22 Q. Well sir, you are aware that there are documents
23 for which the companies you're speaking for today
24 have claimed privilege which concern the Exhibit 502
25 and -- well let's -- I'll rephrase the question.

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1 You understand that there are documents for
2 which privilege has been asserted concerning Exhibit
3 502.

4 MR. SCHEFFLER: Objection. I --

5 Just -- just a minute. Let me -- let me just
6 take a second to review that question.

7 I'm going to have to instruct the witness not to
8 answer that question because it calls for the
9 contents of documents which are claimed to be
10 privileged. I --

11 Now if you could rephrase the question so you're
12 not seeking an expression of content, I will ask you
13 to do so.

14 MS. WIVELL: I had thought I had phrased it
15 so I was not.

16 BY MS. WIVELL:

17 Q. But just to make sure we're clear, without
18 telling me what any of the documents are or what they
19 say, you would agree that there are documents
20 concerning Exhibit 502 which -- for which a privilege
21 has been claimed.

22 MR. SCHEFFLER: Objection, instruct the
23 witness not to answer. I mean how can he answer the
24 question as to whether or not there were documents
25 which are privileged that concern a subject without

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1 revealing that the privileged documents concern a
2 subject?

3 MS. WIVELL: Let's go off the record.

4 MR. SCHEFFLER: Sure.

5 THE REPORTER: Off the record, please.

6 (Discussion off the record.)

7 BY MS. WIVELL:

8 Q. Sir, when you reviewed the file that Exhibit
9 592, the "CHANGE OF STANCE ON SMOKING AND HEALTH"
10 document, and Exhibit 502, the "APPRECIATION"
11 document, came out of, were there other documents in
12 it which -- for which privilege has been asserted?

13 A. I believe there were, yes.

14 Q. How many?

15 A. I don't know.

16 Q. Did you review those documents which originally
17 came from the file that contained Exhibits 592 and
18 502?

19 MR. SCHEFFLER: The privileged documents?

20 MS. WIVELL: Yes, the ones that -- for
21 which privilege has been asserted.

22 A. I didn't review those privileged documents, no.

23 Q. Did anyone else review those documents and
24 report to you what they were?

25 A. No, they didn't.

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1 Q. So do you know who wrote those documents?

2 A. No, I don't.

3 Q. Do you know to whom they were sent?

4 A. No.

5 Q. Do you know if any attorney wrote or received
6 them?

7 A. No, I don't. I just didn't see the documents.

8 Q. Sir, in preparation for your deposition here
9 today with regard to document number 502 and 592,
10 just so we're clear, both of those documents were
11 written by the public affairs department as part of
12 their ordinary business activities at BATCO; right?

13 MR. SCHEFFLER: Objection to the form.

14 A. That -- that's what I've stated is my belief
15 from the story that I've gleaned, yes.

16 Q. All right. Well let me break it out.

17 Exhibit 502 was written by the public relations
18 department of BATCO as part of its ordinary business
19 activities.

20 MR. SCHEFFLER: Asked and answered.

21 Objection.

22 A. I believe that's correct, yes.

23 Q. And it was at or about the -- the date that
24 appears on the document.

25 A. Don't have any reason to doubt that. Yes.

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1 Q. And Plaintiffs' Exhibit 592 was written by the
2 public relations department of BATCO as part of its
3 ordinary business activities; right?

4 A. That's my understanding.

5 Q. And you have no reason to doubt that.

6 A. That's my understanding, yes.

7 Q. Now Exhibit 592 was written at or about the
8 time -- the date that appears on the document.

9 A. Yeah. That seems to be the case.

10 Q. All right. Now sir, you do not know, do you,
11 whether the people who authored Exhibit 502 spoke
12 with Dr. Green before they prepared it?

13 A. I have absolutely no knowledge of that, no.

14 Q. You just don't know one way or the other; do
15 you?

16 A. No idea.

17 Q. And you have no knowledge as you sit here one
18 way or the other whether, before Exhibit 592, the
19 change of stance on public -- on smoking-and-health
20 document was written, whether the folks who authored
21 it spoke with Dr. Green.

22 A. No, I don't. I don't even recall, although we
23 spoke about it earlier, when -- when Green left the
24 organization.

25 Q. And sir, you do not know as you sit here today

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1 whether, before either of these documents were
2 written, the folks who authored them looked at Dr.
3 Green's files; do you?

4 A. I have no idea about that, no.

5 Q. Just don't know one way or the other.

6 A. I don't.

7 Q. And sir, you would agree that you don't know
8 whether the people who wrote these documents, Exhibit
9 592 and 502, talked with Dr. Blackman before they
10 authored them.

11 A. I don't know what they did before they authored
12 them, no. As I have already said, I -- I certainly
13 know that subsequent to the memo of the 16th of May,
14 as we know, the copy went to Blackman, and thereafter
15 I know he was certainly part of the -- the ongoing
16 debate in the issues set out in the document.

17 Q. And we know that because we've seen a couple of
18 the documents that were written afterwards as part of
19 the deposition exhibits here today.

20 MR. SCHEFFLER: Objection to the form.

21 A. Well -- well partly -- partly that. And as I'm
22 giving a story of my -- I was going to use the word
23 again "appreciation," and I mean that in -- in the
24 pure sense, my appreciation of the file, it was clear
25 to me that the debate appeared to be kicked off by

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1 public affairs. Blackman put in the -- the
2 scientific input to -- to make sure that it was
3 accurate from that respect.

4 Q. Because it was important not to present the
5 BATCO board with something that was inaccurate;
6 right?

7 A. Absolutely right.

8 Q. And so when the --

9 To the best of your knowledge, the people who
10 wrote Exhibit 592 and 502 believed the statements
11 that were contained in them to be accurate; right?

12 MR. SCHEFFLER: Objection, calls for
13 speculation.

14 A. Can you repeat that question, please.

15 Q. Well let me rephrase it.

16 Because these documents concern a potential new
17 company position on the issue of smoking and health,
18 it was important that the -- that they be accurate;
19 right?

20 MR. FRANKEL: Object to the form.

21 A. Well I -- I'm sure that anyone who -- who is
22 writing any document wants it to be accurate. And
23 I'm sure the authors of the appreciation document
24 were putting forward what they felt were sound
25 arguments, and of course they'd like them to be

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1 accurate. The -- the accuracy, as I -- I saw, of
2 some areas of the appreciation document was, to
3 Blackman's view, inaccurate from the scientific
4 standpoint, and that's what led to the refinement of
5 the document.

6 Q. Now sir, we can't tell exactly what research the
7 authors of these documents, Exhibit 592 and 502, did
8 before they wrote them.

9 MR. SCHEFFLER: Objection.

10 Q. Can we?

11 MR. SCHEFFLER: Assumes they did any
12 research.

13 A. I've got no information -- information beyond
14 reading of the file, no.

15 Q. And that file contained no information as to the
16 sources precisely of the statements made in the
17 document.

18 MR. SCHEFFLER: Objection, assumes facts
19 not in evidence.

20 A. No, I had no information as to sources. As --
21 as I say, we've -- we did try and speak to -- to
22 Leach and -- and indeed to -- to -- to Ely about
23 these documents, and neither had any recollection of
24 them, so we couldn't find out any more information
25 about them.

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1 Q. Who tried to speak to Ely?

2 A. Lovell White Durrant.

3 Q. Ely is still alive?

4 A. I think that follows.

5 (Laughter.)

6 Q. Well at least we hope so.

7 MR. SCHEFFLER: They had a seance.

8 Q. Now sir, how many attempts were made to try and
9 speak to Mr. Ely?

10 A. I didn't say attempts. He was spoken to. And
11 the substance of what he said is he didn't recall
12 these documents.

13 Q. Sir, we -- we don't know -- I'm sorry, strike
14 that.

15 You don't know as you sit here today what
16 experts were consulted, if any, in preparation of
17 these documents.

18 A. No. As I say, I -- I've got no information
19 above and beyond what the files told me, and there's
20 no reference in the file that I saw to any
21 external -- sorry, external to public affairs' input
22 into this appreciation document.

23 Q. Now sir, Exhibit 743, the draft for the CAC
24 conference in Vancouver that you brought to the
25 deposition with you today, is a document from that

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1 file; right?

2 MR. SCHEFFLER: Objection, mischaracterizes
3 the testimony. Asked and answered.

4 A. I'm not sure that is the case now. And I think
5 I -- I -- I can't remember if I found this or was
6 given this as part of the file or -- or not. I think
7 I said earlier it wasn't part of that particular
8 file.

9 Q. Sir, you have -- I'm sorry, strike that.

10 Exhibit 743 is marked a draft for the CAC
11 conference; right?

12 A. The draft of CAC conference, Vancouver, yes.

13 Q. You have seen a more-finished product relating
14 to the same subject; haven't you?

15 MR. SCHEFFLER: Objection to the form,
16 vague.

17 A. I -- I may have done. I'm sure if I have,
18 you'll show me.

19 (Plaintiffs' Exhibit 747 was marked
20 for identification.)

21 MR. SCHEFFLER: Counsel, I -- I have --
22 You handed me two documents stapled together as
23 Exhibit 747. Is that deliberate or --

24 These are two separate documents you -- that I
25 have that are stapled as one. Is that -- is that

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1 your intent?

2 MS. WIVELL: Well I didn't really --

3 I don't know that they're two separate
4 documents.

5 MR. SCHEFFLER: One is dated May 19th,
6 1980, and the second is dated May 22, 1980. And the
7 second document is part of a larger document. But in
8 any event, you can --

9 MS. WIVELL: Well I notice that they are
10 consecutively Bates numbered.

11 MR. SCHEFFLER: That's correct. But in the
12 file they didn't appear as one document. They
13 weren't produced as such. But you can -- you can,
14 you know, if you want to --

15 MS. WIVELL: Let's go --

16 MR. SCHEFFLER: If you want to staple them
17 together and ask questions about them, I have no
18 objection. I just want the record to reflect that
19 they are two documents stapled together as Exhibit
20 747.

21 MS. WIVELL: Well for the record, because I
22 wasn't present when these documents were reviewed and
23 because of the nature of the -- the way the documents
24 were produced as a file, I note that I have been told
25 that sometimes it's very difficult to tell when a

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1 document starts and a document ends. But for --

2 Q. Just for the record so we're clear, what has

3 been marked as Exhibit 747 begins with the Bates

4 number 109881356; right, sir?

5 A. That's correct.

6 Q. The next page is 109881357?

7 A. Yes.

8 Q. And the last page is 109881362?

9 A. Yes.

10 Q. And the pages are consecutively Bates numbered;

11 aren't they, sir?

12 A. They are, yes.

13 Q. Let's turn to the first page that -- that ends

14 with the Bates number 356. This is a document

15 authored by Lionel Blackman dated May 19th, 1980;

16 right?

17 A. Yes.

18 Q. And sir, there Dr. Blackman says, "It would not

19 be credible for us to say 'we now accept,'" in

20 quotes, "the primary health issue;" right?

21 A. That's what it says here, yes.

22 Q. And it goes on to say in the third paragraph

23 that "...no industry could have been expected openly

24 to accept causation - when even now it is impossible

25 to prove, and genuine debate continues among

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1 experts...;" right?

2 MR. SCHEFFLER: "In the field."

3 Q. "In the field." Right?

4 A. That's what it says.

5 Q. Now sir, it is true that even after the
6 appreciation document and the change in stance on
7 smoking-and-health document which we looked at
8 earlier, that there was not a change in the BATCO
9 stance on smoking and health until the issue was
10 addressed at the board meeting in December of 1980;
11 right?

12 MR. SCHEFFLER: Objection to the form of
13 the question, compound. Assumes facts not in
14 evidence.

15 A. I don't think I'm in a position to say when
16 the -- if and when the position of BATCO on these
17 issues actually did or didn't change because I --
18 I -- I don't know what might have been the position
19 going back to the '60s and '70s or before and after
20 the date we're talking about here.

21 Q. Well sir, going back to Exhibit 742, did the
22 position of the company change as a result of the
23 meeting that occurred on December 18th, 1980?

24 MR. SCHEFFLER: Object to the form of the
25 question, beyond the scope of this deposition.

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1 A. The answer is I -- I don't know. I don't know
2 what it changed from. All -- all I could ascertain
3 from -- from the reading was that there was a
4 debate. I -- I haven't find -- found a start or an
5 opening position and -- and a closing position. All
6 I found was a file dealing with an ongoing debate.

7 Q. Did you check the board minutes in their
8 entirety in order to determine if there was a
9 position that had previously been adopted by the
10 board that changed as of that December meeting?

11 A. Are you --

12 When you say the board minutes in their
13 entirety, what -- what period of time are we talking
14 about for that?

15 Q. Well, before the December 1980 board meeting.
16 Did you check the minutes to see if there was a
17 position that had been adopted formally before then?

18 MR. SCHEFFLER: For -- for time
19 immemorial? I mean beginning when?

20 Objection, overbroad.

21 A. Yeah, I -- I have trouble with that. I mean if
22 you can help me out with saying --

23 I think you're trying to ask me was there a
24 position I found at a period in time, which I'm not
25 sure what period in time we're talking about, which

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1 then changed subsequent to the 18th of December 1980.

2 Q. Well maybe I should say it this way: Sir, was
3 there a change in official position of the company
4 with regard to the smoking-and-health issue on
5 December 18th, 1980?

6 MR. FRANKEL: Object to form.

7 MR. SCHEFFLER: And asked and answered.

8 A. I've not found a -- a change.

9 Q. Now sir, if we turn to what is the second page
10 of Exhibit 747, there is a page headed "IS THE SAFE
11 CIGARETTE ON THE WAY?" Right?

12 A. That's what the page says, yes.

13 Q. And if we look back at the document we addressed
14 earlier in the deposition, the draft for the
15 Vancouver CAC meeting, --

16 MR. SCHEFFLER: 743.

17 Q. -- this is the final paper from that draft;
18 isn't it?

19 MR. SCHEFFLER: Objection, lack of
20 foundation.

21 A. I can't say it's -- it's the final paper. I
22 just don't -- I don't recall seeing a --

23 I don't know what was presented eventually to
24 the Vancouver conference. I certainly didn't see
25 that in this file.

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1 Q. All right. It, however, begins in the same way
2 that Exhibit 743 begins; doesn't it?

3 A. Yes, it does. Yes.

4 Q. They -- they both begin with the query "Is the
5 safe cigarette on the way?" Right?

6 A. Yes.

7 Q. Now sir, if we take a look at the last -- I'm
8 sorry, not the last page. Strike that.

9 If we take a look at the first page of Exhibit
10 747, Dr. Blackman advocates the need for an open
11 forum to discuss and debate the related scientific
12 and medical research work relating to the issue of
13 smoking and health; right?

14 A. Are you reading the last paragraph?

15 Q. I'm referring to the last paragraph, sir.

16 A. I note it's credited here to Blackman. States
17 that "What I believe we must have is a much more open
18 forum to discuss and debate the related
19 scientific/medical research work," then goes on.

20 Q. Now that forum is -- strike that.

21 The need to have a discussion about the
22 importance of smoking-and-health-related issues is
23 reflected in the board minutes from that December
24 18th, 1980 meeting; isn't it, sir?

25 MR. SCHEFFLER: Objection, question is

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1 vague. If you're referring -- is --

2 Is your question is the board minute the same
3 discussion as that? I object on the basis of form.

4 A. Can you repeat the question for me?

5 Q. Certainly.

6 The need to have a discussion about the
7 importance of smoking-and-health-related issues is
8 reflected in the last paragraph of the board minutes
9 from the December 18th, 1980 meeting; isn't it, sir?

10 MR. SCHEFFLER: Objection to the form.

11 A. Sorry, the last paragraph, which --

12 Q. I'm sorry, the second -- let me strike -- start
13 again.

14 The need to have a discussion about the
15 importance of smoking-and-health-related issues is
16 reflected in the second-to-the-last paragraph of the
17 board minutes from the December 18th, 1980 meeting;
18 isn't it, sir?

19 MR. SCHEFFLER: Objection to the form.

20 A. Are you referring there to the paragraph that
21 says "Dr. Blackman will also discuss with other
22 Directors....?"

23 Q. It says "will also discuss with other Directors,
24 Chelwood, Mr. Haddon and Mr. Ely with a view to
25 giving talks in order to communicate our stance as

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1 widely as possible within the Group, including Other
2 Operating groups;" right?

3 A. That's what it says.

4 Q. In other words, the -- the instruction was that
5 Dr. Blackman would discuss with the directors and
6 others the importance of giving talks to communicate
7 the companies' stance on smoking and health; right?

8 A. Well the -- the paragraph -- I --

9 I mean I know nothing over and above what the
10 paragraph itself says about -- that's talking about
11 internal within the group.

12 MR. SCHEFFLER: Let the record reflect that
13 Mr. Gilbey is referring to the next-to-last paragraph
14 of Exhibit 742 dated 18th December 1980.

15 Q. Now sir, three paragraphs up -- or two
16 paragraphs up from that, at the end of the paragraph
17 that begins with "Item 3," it says, "Dr. Blackman
18 will arrange to consider this further with Millbank
19 and B&W legal and public affairs departments, and it
20 will be discussed again in the smoking issues session
21 at the BMB planning meeting in January;" right?

22 A. That's what it says.

23 Q. What does --

24 THE REPORTER: I have to change tape. Off
25 the record, please.

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1 (Discussion off the record.)

2 BY MS. WIVELL:

3 Q. Sir, what does the reference to the BMB refer
4 to?

5 A. I believe that's the initials of the BATCO
6 Management Board.

7 Q. So would it be correct in assuming that the
8 issue of a new smoking-and-health policy would be
9 discussed again, then, at the planning meeting in
10 January?

11 MR. SCHEFFLER: Objection to the form,
12 mischaracterization of the document. The sentence
13 that you're pulling out of this document where BMB
14 planning meeting occurs does not refer to what you're
15 claiming it refers to.

16 A. Sorry. Can you give me again your question?

17 Q. Certainly.

18 Would it be correct for me to assume that the
19 issue of the new smoking-and-health policy was to be
20 discussed again at the planning meeting in January?

21 MR. SCHEFFLER: Same objection,
22 mischaracterization of the document.

23 A. I don't think it's correct to say it's a new
24 smoking-and-health policy. I -- I take to that mean
25 that the proposals that had been put to the board at

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1 this -- at this date will be further discussed after
2 further input with -- with -- with others identified
3 at a later date in January.

4 Q. Now sir, the third point that's listed under
5 the -- or in the document says, "Whilst it is by no
6 means accepted by the industry as conclusive, there
7 is growing epidemiological evidence derived by third
8 parties (who are themselves generally committed
9 non-smokers) that supports the trend to lower
10 deliveries;" right?

11 A. That's what it says.

12 Q. Now Exhibit 742 notes that item three poses a
13 problem in that, by communicating the statistical
14 evidence, it could be implied that the industry
15 previously believed smoking was dangerous; right?

16 A. That's what it says, yes.

17 Q. Now by the time --

18 MR. SCHEFFLER: I'd like the next sentence
19 to be read to put the sentence into context.

20 Q. By the time Exhibit 742 was written in the
21 December of 1980, Dr. Blackman had written about the
22 body of epidemiological evidence relating to the
23 health risk of smoking; hadn't he?

24 A. You are going back to 747 --

25 Q. Yes, sir.

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1 A. -- there? And that's the penultimate paragraph
2 there.

3 Q. And there he says, "The overwhelming and
4 mounting body of epidemiological evidence showing
5 reduced health risks with, quote, modern, quote,
6 cigarettes still relates merely to filters and to
7 some modest reduction in delivery levels. It is
8 almost certain that when corresponding studies are
9 made on smokers who have spent their lives with low
10 delivery products (say, 12 milligrams tar and below),
11 the results will show correspondingly greater
12 reductions in health risk - probably to a level that
13 will negate the primary health argument. We are,
14 however, talking about 10 years plus in the future."
15 Did I read that correctly?

16 A. You did, yes.

17 Q. Now sir, isn't it true that up to today the
18 companies for whom you speak here at this deposition
19 have never admitted that the majority or the
20 overwhelming body of epidemiological evidence shows
21 reduced health risk with modern cigarettes?

22 MR. SCHEFFLER: I object to the form of the
23 question and also object as beyond the scope of this
24 deposition.

25 A. I -- I don't know the answer. I'm just not

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1 qualified to -- to respond to the question, I'm
2 afraid.

3 Q. Well let me ask you this, sir: In looking at
4 the file in preparation for your deposition today,
5 did you see further memos that Dr. Blackman wrote
6 around this time period concerning low-delivery
7 cigarettes?

8 A. That's a tough question, only because I -- I
9 don't recall every single piece of paper that was in
10 the file. I mean much -- much of the file you
11 noticed for the deposition, so that's a -- a lot -- a
12 lot of it is comprehensively here today. I don't
13 recall other specific documents, you know. I mean
14 you -- you didn't miss much from what you noticed. I
15 can't recall if there was anything else on that
16 subject.

17 (Plaintiffs' Exhibit 748 was marked
18 for identification.)

19 BY MS. WIVELL:

20 Q. Sir, showing you what's been marked as
21 Plaintiffs' Exhibit 748, this is another of those
22 documents from Dr. Blackman's files that was written
23 while this debate -- strike that.

24 Showing you what's been marked as Plaintiffs'
25 Exhibit 748, this is another of those documents from

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1 Dr. Blackman's files that was written during this
2 same time period that we've been discussing here
3 today; right?

4 A. It's credited to Blackman, yes. It seems to be
5 from the same period.

6 Q. And this document is entitled "TRENDS IN SMOKING
7 AND HEALTH 1980;" right?

8 A. That's right.

9 Q. It says, "The development of low delivery
10 products and the growing acceptance by consumers in,
11 at least, certain countries, are acknowledged by some
12 medical authorities (who find themselves mainly
13 anti-smoking) as a major contribution to a resolution
14 of smoking-related disease." Right?

15 A. That's what it says, yes.

16 Q. And then it talks about "Provided that
17 endorsement of such products is made by third
18 parties, the industry's legal position, even in the
19 U S A, is not compromised;" right?

20 A. It says that, yes.

21 Q. Well sir, why is it necessary that the -- the
22 endorsement of lower-development products are made by
23 third parties?

24 MR. SCHEFFLER: Objection. Are you asking
25 this witness as to his understanding or are you

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1 asking this witness as to what Mr. Blackman's

2 understanding was when he wrote this?

3 A. I can't answer as to what Blackman had in mind

4 when he wrote that paragraph.

5 Q. Well sir, if we go back to Exhibit 742, it says

6 under point two, "Industry has been highly

7 responsible in undertaking research and in working

8 closely with medical authorities; while at the same

9 time responding to the views of governments, the

10 medical professions and the consumer by substantially

11 reducing product deliveries." Have I read it

12 correctly so far?

13 MR. SCHEFFLER: You left off the last

14 sentence.

15 Q. I'm sorry?

16 A. So far, yes. The last sentence, "In doing this,

17 it has met the increasing consumer demand for such

18 products." Yes.

19 Q. Well sir, have or --

20 Has BATCO ever told consumers that the

21 low-delivery products were safer cigarettes?

22 MR. SCHEFFLER: Objection to the form,

23 assumes facts not in evidence, objection to the fact

24 that no foundation has been laid for this question

25 with this witness, and that it's beyond the scope of

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1 this deposition.

2 A. I don't know that because the answer to that
3 question has to come from someone in public affairs
4 or perhaps one of the scientists.

5 Q. And you just don't know as you sit here today.

6 A. I have no idea.

7 Q. We do know that Dr. Blackman had said in that --
8 that draft, Exhibit 743, that there is no doubt that
9 the safer cigarette is here now; right?

10 MR. SCHEFFLER: Objection, asked and
11 answered at least two times prior to this.

12 A. I think that statement is credited to Blackman
13 on at least one occasion, yes.

14 Q. Now if we turn to the second page of Exhibit
15 748, there is a discussion of the changing worldwide
16 climate which demands that there be a changed stance
17 if the industry was to regain or attain credibility
18 in the eyes of consumers and its detractors; right?

19 MR. SCHEFFLER: Well it's "our detractors,"
20 but --

21 A. You're paraphrasing a bit, but in substance
22 that's what it says.

23 Q. And it --

24 In this memo Dr. Blackman also says, "What is
25 urgently required is a platform from which Industry

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1 can reassure Consumers and explain to Detractors just
2 what has been done, and continues to be done, to
3 reduce the statistically associated health risk of
4 smoking to acceptable or even non-detectible levels;"
5 right?

6 A. That's what it says.

7 Q. Now sir, you have no doubt -- I'm sorry, strike
8 that.

9 To the best of your knowledge, Exhibit 748 was
10 written by Dr. Blackman at or around the time it was
11 dated.

12 MR. SCHEFFLER: Objection, asked and
13 answered.

14 A. So far as I'm aware.

15 Q. And nothing in your -- in your investigation or
16 preparation for your deposition has led you to
17 conclude to the contrary; right?

18 A. That's right.

19 Q. Sir, isn't it a fact that the legal
20 considerations involved in the smoking-and-health
21 cases that have been filed against Brown & Williamson
22 in the United States caused the board not to change
23 its policy?

24 MR. SCHEFFLER: Objection, assumes facts
25 not in evidence, and also lack of foundation, and

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- 1 vague and overbroad as to time.
- 2 A. You put it as a fact to me. I -- and I -- I
- 3 certainly don't know that as a fact at all. I think
- 4 the consideration, the overwhelming consideration,
- 5 and I was pleased to see this when I read the file,
- 6 was that as a responsible company they were looking
- 7 into these issues and were coming up with a position
- 8 which was both -- which -- which was accurate and
- 9 factually correct, and I think that was the
- 10 overwhelming driver and consideration behind all that
- 11 happened here.
- 12 Q. Sir, showing you what's previously been marked
- 13 in this deposition -- in this litigation as Exhibit
- 14 503, this is a document entitled "LEGAL
- 15 CONSIDERATIONS IN SMOKING AND HEALTH ISSUES;" right?
- 16 A. That's what it says.
- 17 Q. The Bates number is 107620266; right?
- 18 A. Yes.
- 19 Q. And it refers to -- I'm sorry, strike that.
- 20 If we look at the upper left-hand corner we see
- 21 it was circulated to all number ones; right?
- 22 A. Where are you reading from?
- 23 Q. The upper left-hand corner in the box with the
- 24 date September 17th, 1982.
- 25 A. I see.

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1 Q. We see that it was circulated to all number
2 ones; right?

3 A. The stamp says that, yes.

4 Q. And it refers to a note issued by Mr. H. A.
5 Morini, legal director of BATCO, which was sent in
6 May of 1981.

7 A. It refers to that, yes.

8 Q. And Mr. Morini is one of the people who received
9 the "APPRECIATION" document; isn't that true?

10 A. So it seems, yes.

11 Q. And sir, according to Exhibit 503, the May 1981
12 document was being recirculated under the cover of a
13 note issued by P. J. Ricketts, legal director of
14 B.A.T Industries P.L.C.; right?

15 MR. SCHEFFLER: Objection, the document
16 speaks for itself, and it's unrelated to any of the
17 issues in this case. It was authored two years after
18 the -- the file in this case that these documents
19 came from that was noticed for the deposition was
20 created.

21 A. I'd just like to read the letter, please.

22 Q. Certainly.

23 A. Thank you. I've read the letter.

24 Q. And sir, according to Exhibit 503, the May 1981
25 document was being recirculated by P. J. Ricketts,

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1 legal director of B.A.T Industries P.L.C.; right?

2 MR. SCHEFFLER: Objection. It's --

3 Q. Let me withdraw the question.

4 According to Exhibit 503, the May 1981 document
5 was being recirculated under the cover of a note
6 issued by P. J. Ricketts, legal director of B.A.T
7 Industries P.L.C.; right?

8 MR. SCHEFFLER: I must object on the basis
9 of lack of foundation, lack of -- of anything to do
10 with this deposition and -- and what it was noticed
11 for. And the document speaks for itself. You
12 haven't shown that this witness has any information
13 to add to what the -- the letters of this document
14 say.

15 A. I -- I hadn't seen this letter before today, I
16 don't think, and I think to -- to read the half the
17 first -- of the last paragraph, as you've done,
18 mischaracterizes and -- and takes completely out of
19 context what's being said. The note is being
20 recirculated under cover of a note issued by
21 Ricketts, legal director of B.A.T Industries P.L.C.,
22 "which stresses the importance of understanding the
23 legal considerations involved in smoking and health
24 issues," and I think --

25 Q. "...having particular regard to the fate of the

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1 Manville Corporation in the USA;" right?

2 A. Indeed so. And then I think, therefore, if
3 it's -- there's -- there's no suggestion, if -- if
4 one was imminent, that the earlier note was being
5 amended in any way. It's being recirculated under
6 cover of another note dealing with an important topic
7 of the day.

8 Q. And sir, that's my point precisely. You would
9 agree that the -- there was no change of stance in
10 regard to the smoking-and-health issue because of
11 legal considerations relating to cases involving
12 smoking and health in the United States; right?

13 MR. SCHEFFLER: I -- I object. I object to
14 counsel's comments. I object to the fact of using a
15 document that refers to a note that's being
16 recirculated under cover of another note, neither of
17 which are -- are produced to the witness. How could
18 he possibly answer a question such as that? Calls
19 for speculation at the grossest.

20 A. I'm trying to answer. I mean I've not seen the
21 note of May 1981. I've got absolutely no idea what
22 it may or may not say. Beyond that, whatever the
23 note says is being recirculated with another note. I
24 mean that's all -- that's all this letter says.

25 Q. Sir, showing you what's been marked previously

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1 in this litigation as Plaintiffs' Exhibit 317, this
2 is a document that begins with the Bates number
3 620789910; right?

4 A. Yes.

5 Q. It is a memo from P. J. Ricketts to all
6 operating group chairman, liaison directors, entitled
7 "LEGAL CONSIDERATIONS IN SMOKING AND HEALTH ISSUES;"
8 right?

9 A. So it appears.

10 Q. Now this document is dated March 26, 1984;
11 right?

12 A. Yes.

13 Q. Have you ever seen this document before, sir?

14 MR. SCHEFFLER: I object that it's beyond
15 the scope of this deposition, certainly, and the
16 documents that were noticed for discovery at this
17 deposition. But if you can answer the question,
18 please do so.

19 A. The --

20 Some of the text does seem familiar, but I can't
21 recall where or when I saw it before.

22 Q. Exhibit 317 is composed of two pages; right?

23 A. Yes.

24 Q. The first is a memo from P. J. Ricketts to all
25 operating group chairmen and liaison directors as

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1 we've established; right?

2 A. That's apparently right, yes.

3 Q. And in that memo it talks about recent changes
4 in some states in the U.S.A. resulting in a fresh
5 spate of litigation against the tobacco industry;
6 right?

7 MR. SCHEFFLER: Again this is totally
8 beyond the scope of this deposition by the timeframe
9 of the documents which were noticed to be the subject
10 of the deposition. Has no relevance to any -- any of
11 the issues that this deposition was noticed to
12 address.

13 A. So far that's what the document says.

14 Q. And it stresses the importance that members of
15 the group be constantly aware of the B.A.T
16 Industries' stance on smoking and health; right?

17 MR. SCHEFFLER: Same objections.

18 A. That's what it says.

19 Q. And it goes on to ask -- or to say that Ricketts
20 would be grateful if the recipients would ensure the
21 widest possible circulation in their operating groups
22 of the group policy on smoking and health; right?

23 MR. SCHEFFLER: Same objections.

24 A. As summarized in the attached note, yes.

25 Q. And the attached note does set forth the B.A.T

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1 Industries' stance on smoking and health; doesn't
2 it?

3 MR. SCHEFFLER: Objection, the document
4 speaks for itself, no foundation, beyond the scope of
5 this deposition.

6 A. What I take from --

7 The second page is headed "LEGAL CONSIDERATIONS
8 ON SMOKING AND HEALTH POLICY," as I say, it's got a
9 familiar ring to it. Beyond that I know nothing
10 about the -- the note.

11 Q. Well it says, "Although primarily the concern is
12 the Group's tobacco interest, it is important for
13 senior executives in other parts of the Group to be
14 aware of the stance taken." Right?

15 A. That's what it says, and that seems a sensible
16 position to take.

17 Q. All right. And it goes on in the second
18 paragraph to say, "The issue is controversial and
19 there is no case for either condemning or encouraging
20 smoking;" right?

21 MR. SCHEFFLER: Objection, it -- I object
22 to the use of the document in this fashion because it
23 has no relevance to the issues for this deposition,
24 but it -- I particularly object to keeping --
25 counsel's insistence on pointing out one sentence of

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1 a paragraph and using it inappropriately, and I
2 demand that the entire paragraph be read for
3 completeness sake, and I request that counsel do that
4 at this time, as I would make that request if this
5 were a deposition for trial.

6 Q. Do you have my question in mind, sir?

7 A. Can you give it to me again?

8 Q. And it goes on to say in the second paragraph,
9 quote, "The issue is controversial and there is no
10 case for either condemning or encouraging smoking."
11 Right?

12 MR. SCHEFFLER: Same -- same objection and
13 same request.

14 A. That is one sentence in a -- in a much larger
15 paragraph which says --

16 The "very great danger" is being taken out of
17 context.

18 Q. And it concludes -- or that paragraph concludes
19 by saying, "Thus a genuine scientific controversy
20 exists;" right?

21 A. Again it's another sentence from the same
22 paragraph which has got to be put into the context of
23 the whole.

24 Q. And I read it correctly; didn't I, sir?

25 A. That one sentence, yes.

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1 Q. At next paragraph begins, "The Group's position
2 is that causation has not been proved and that we do
3 not make our -- make ourselves" -- I'm sorry, strike
4 that.

5 And the next paragraph begins, "The Group's
6 position is that causation has not been proved and
7 that we do not ourselves make health claims for
8 tobacco products." Right?

9 A. That's the start of the next paragraph, yes.

10 Q. Sir, isn't it true that one reason that the BAT
11 Group did not claim that it had a safer cigarette is
12 because to do so would imply that the cigarettes they
13 already marketed were unsafe?

14 MR. SCHEFFLER: Objection, asked and
15 answered, beyond the scope of this deposition,
16 mischaracterizes Exhibit 317 as the rest of the
17 exhibit reads.

18 A. That's not a question I'm really qualified to
19 answer because I think it's a matter between public
20 affairs and -- and the scientists.

21 Q. Well if that is a matter between public affairs
22 and the scientists, can you explain to me why Sir
23 Patrick Sheehy wrote in December of 1986, "A second
24 practical objection is that in attempting to develop
25 a, quote, safe, quote, cigarette you are, by

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1 implication in danger of being interpreted as
2 accepting that the current product is, quote, unsafe,
3 quote, and this is not a position I think we should
4 take?"

5 MR. SCHEFFLER: Objection. Number one,
6 it's beyond the scope of this deposition. Number
7 two, there's no competent -- no foundation laid for
8 such a question to this witness. Number three, it is
9 taking out of context, once again, a small paragraph
10 of a -- of a document that has been used and
11 explained in prior depositions and -- and set into
12 proper context, and it's inappropriate to try to do
13 this with this witness.

14 A. I wouldn't assume to speak on Sir Patrick
15 Sheehy's behalf. And -- and again I understand, if
16 you'd like, you'll have the opportunity to put the
17 question directly to him in the near future.

18 Q. Sir, directing your attention to Plaintiffs'
19 Exhibit 533, if you turn to the second page, do you
20 see that that is precisely what he said in the fifth
21 paragraph from the bottom? Right?

22 MR. SCHEFFLER: I object to the use of this
23 document. I object to counsel's questions with
24 respect to that paragraph as she has asked the
25 identical question to the witness who was properly

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1 identified and noticed to discuss the issues smoking
2 and health such as this issue here. That question
3 was raised at Mr. Proctor. Mr. Proctor identified
4 the issue and discussed it at plaintiffs' demand, has
5 given testimony as the proper 30(f)(2) witness. It
6 is not the scope of this witness. It is not within
7 the notice of this deposition. It is well beyond
8 anything that could possibly be relating to the May
9 1980 "APPRECIATION" document and June 1980 "CHANGE OF
10 STANCE" document, and therefore it's inappropriate
11 and improper.

12 A. I've not seen this document before you just gave
13 it to me. I really don't feel qualified to comment
14 as to what Sheehy said at this time.

15 Q. But sir, reading the fifth paragraph from the
16 bottom, you agree that I did read what Sir Patrick
17 Sheehy wrote there correctly; right?

18 MR. SCHEFFLER: We'll stipulate you can
19 read, counsel.

20 A. I -- I think you did. I didn't follow it in the
21 text.

22 Q. All right.

23 A. I have no reason to think you made a mistake.

24 Q. Sir, isn't it a fact that the reason that the
25 stances were not -- that are set forth in the

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1 appendix to the "APPRECIATION" document, Exhibit 502,
2 were not adopted is because it was feared that they
3 would come back and be used against Brown &
4 Williamson in the tobacco litigation in the United
5 States?

6 MR. SCHEFFLER: Objection.

7 A. I think that's definitely not a fact, because
8 the reason the appendices were not used were because
9 they were felt to be scientifically flawed, and I've
10 seen no documents which support the assertion you
11 just made.

12 Q. Sir, can you direct me to one single document
13 which says that the appendixes which are attached to
14 Exhibit 502 are scientifically flawed?

15 A. I can't -- I can't give you a -- a document
16 straight off the top of my head. I know that I've
17 seen in the file, and whether they're here or not I
18 don't know, the -- the Blackman notes that followed
19 those "APPRECIATION" appendices were critical of the
20 science and the scientific positions set out in those
21 appendices.

22 Q. Do you have any documents to show the ladies and
23 gentlemen of the jury that say that --

24 MR. SCHEFFLER: Well let's --

25 Q. -- with you here today?

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1 MR. SCHEFFLER: Let's take a break and
2 we'll see if we can -- we can help counsel.

3 Q. Let me rephrase the question.

4 Do you have any documents to show the ladies and
5 gentlemen of the jury where Dr. Blackman says that
6 what is stated in the appendices is, quote,
7 flawed, --

8 MR. SCHEFFLER: Yes.

9 Q. -- close quote?

10 MR. SCHEFFLER: We'll take a break and
11 we'll find that for you, counsel.

12 THE REPORTER: Off the record, please.

13 MS. WIVELL: I would like an answer to the
14 question.

15 MR. SCHEFFLER: Well are you --

16 I object if counsel is asking for the witness to
17 cite for her a document off the top of his head. I
18 think that's unfair. If you want him to review the
19 documents and find the documents responsive that he
20 recalls seeing, then I think he has the chance and
21 opportunity to do that.

22 MS. WIVELL: I'd like an answer to my
23 question.

24 MR. SCHEFFLER: Well I'm not sure what your
25 question is.

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1 MS. WIVELL: All right.

2 MR. SCHEFFLER: Are you asking him to try
3 to cite a document off the top of his head?

4 MS. WIVELL: Let me rephrase it.

5 BY MS. WIVELL:

6 Q. Do you have with you any documents to show the
7 ladies and gentlemen of the jury using the words --
8 where Dr. Blackman used the words that these
9 appendices are, quote, flawed, close quote?

10 A. I don't think those documents -- those words are
11 used, no, is -- is the short answer to that. That
12 doesn't go far enough, because I'm giving you the --
13 as I have done -- the history of what happened over
14 this period in time. The "APPRECIATION" document
15 was, again as we said much earlier, was the starting
16 point for debate that went on until the board were
17 given a presentation or a note in December. Much of
18 what followed the public affairs "APPRECIATION"
19 document was input from Blackman who, not in the --
20 the cold terms you -- you say, but in the terms of
21 his notes, was pointing out that you couldn't say
22 just what public affairs was saying because it was
23 scientifically incorrect, and therefore the -- the
24 "APPRECIATION" document and its appendices were --
25 were amended and varied to properly reflect

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1 accurately. And -- and again we've debated, of
2 course, the board wanting to put an accurate position
3 on -- on these issues. The input from Blackman was
4 invaluable in making sure that what went before the
5 board was accurate, both scientifically and from
6 other perspectives that the position had to
7 represent.

8 Q. Well sir, you're the one who used the word
9 "flawed;" right?

10 A. I probably did.

11 Q. All right. And that was not a word that you saw
12 in any of the documents that Dr. Blackman wrote;
13 right?

14 MR. SCHEFFLER: I object to the form of the
15 question as argumentative.

16 A. I actually don't remember if I saw it in a
17 Blackman note or whether it just came to me for the
18 purposes of our discussion. I used it to illustrate
19 the central point I'm trying to make, that public
20 affairs started this debate, or we -- we take it that
21 they started this debate in May with the
22 "APPRECIATION" document. Blackman was -- was part
23 of the -- the general debate that was going on, and
24 it would have been negligent of him, it appears to
25 me, to let those documents go as they were first

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1 drafted because they were scientifically, I say
2 flawed or incorrect or insupportable, whichever word
3 we use. That is the sum of my understanding of the
4 file.

5 MS. WIVELL: I have nothing further.

6 MR. SCHEFFLER: Let's just take two
7 minutes.

8 (Discussion off the record.)

9 MR. SCHEFFLER: We have no questions.

10 MS. WIVELL: Thank you.

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1 C E R T I F I C A T E

2 I, Richard G. Stirewalt, hereby certify
3 that I am qualified as a verbatim shorthand reporter;
4 that I took in stenographic shorthand the testimony
5 of MARTYN C. GILBEY at the time and place aforesaid;
6 and that the foregoing transcript consisting of pages
7 1 through 198 is a true and correct, full and
8 complete transcription of said shorthand notes, to
9 the best of my ability.

10 Dated at London, England, this 11th day of
11 September, 1997.

12

13

14

15 RICHARD G. STIREWALT

16 Registered Professional Reporter

17 Notary Public

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1 C E R T I F I C A T E

2 I, MARTYN C. GILBEY, the deponent, hereby
3 certify that I have read the foregoing transcript
4 consisting of pages 1 through 198, and that said
5 transcript is a true and correct, full and complete
6 transcription of my deposition except:

7

8

9

10

11

12

13

14

15 MARTYN C. GILBEY

16 Deponent

17

18 Sworn and subscribed to before me this day
19 of , 1997.

20

21

22

23 Notary Public

24

25 My commission expires .

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